

No. 10189

---

---

United States  
Circuit Court of Appeals

For the Ninth Circuit.

---

EMPIRE OIL AND GAS CORPORATION, a corporation, and CHESTER WALKER COLGROVE, trading as Colusa Products Company,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

---

Transcript of Record

---

Upon Appeals from the District Court of the United States  
for the Northern District of California,  
Southern Division

FILED

FEB 13 1943

PAUL P. O'BRIEN,

CLERK



No. 10189

---

United States  
Circuit Court of Appeals

For the Ninth Circuit.

---

EMPIRE OIL AND GAS CORPORATION, a corporation, and CHESTER WALKER COLGROVE, trading as Colusa Products Company,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

---

Transcript of Record

---

Upon Appeals from the District Court of the United States  
for the Northern District of California,  
Southern Division



# INDEX

---

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

|   | Page |
|---|------|
| Appeal:   |      |
| Certificate of Clerk to Transcript of Record on .....       | 378  |
| Instructions to Clerk Under Rule 19 (CCA)                   | 380  |
| Notice of (Chester Walker Colgrove)....                     | 320  |
| Notice of (Empire Oil and Gas Corporation) .....            | 312  |
| Order Authorizing Deposit of Fine in Escrow Pending .....   | 327  |
| Praecipe (DC) .....   | 376  |
| Arraignment and Pleas.....                                  | 13   |
| Assignment of Errors.....                                   | 333  |
| Bill of Exceptions.....                                     | 14   |
| Exhibits for Government:                                    |      |
| 7—Circular, 65,381-E, Included With Shipments of Drugs..... | 22   |
| 8—Newspaper Mat Included With Shipments of Drugs.....       | 27   |

| Index   | Page    |
|---|---------|
| Exhibits for Government—(Continued):  |         |
| 13—Letter to Chester Walker Colgrove, Oct. 28, 1940, Signed Wm. G. Woodman and Photostat Copy of Same .....                         | 256     |
| 14—Formula from Page 424 of Pharmacopoeia of United States.....   | 272     |
| Exhibits for Defendants:  |         |
| L—(For Identification) Memorandum Made by Dr. C. E. Von Hoover of Results of Application of Colusa Natural Oil to Skin of Animals.. | 134     |
| M—(For Identification) Report Entitled “A Report of the Clinical Results of Colusa”.....  | 139     |
| P—(For Identification) Letter Dated Jan. 22, 1941, Addressed to McCoy Label Co., Signed C. W. Colgrove .....                        | 172     |
| Q-1—(For Identification) Excerpts from Voluntary Testimonial Letters from Users of Colusa Natural Oil Products .....                | 181-250 |
| Order Settling Bill of Exceptions.....  | 302     |

## Index

Page

## Witnesses for Defendants:

|                             |     |
|-----------------------------|-----|
| Cameron, Mrs. Opal          |     |
| —direct .....               | 157 |
| —cross .....                | 158 |
| Colgrove, Chester Walker    |     |
| —direct .....               | 161 |
| —cross .....                | 253 |
| —redirect .....             | 259 |
| Costello, Miss Evelyn Marie |     |
| —direct .....               | 109 |
| —cross .....                | 110 |
| Crawford, Donald R.         |     |
| —direct .....               | 83  |
| —cross .....                | 84  |
| Davis, Miss Adele           |     |
| —direct .....               | 111 |
| Everett, Howard             |     |
| —direct .....               | 93  |
| —cross .....                | 95  |
| Fazio, Frank                |     |
| —direct .....               | 77  |
| —cross .....                | 79  |
| Gerlach, Mrs. Rena          |     |
| —direct .....               | 92  |
| —cross .....                | 92  |

| Index                                 | Page |
|---------------------------------------|------|
| Witnesses for Defendants—(Continued): |      |
| Harless, Mrs. Agatha Devlin           |      |
| —direct .....                         | 91   |
| —cross .....                          | 91   |
| Loughran, Mrs. Teresa J.              |      |
| —direct .....                         | 89   |
| —cross .....                          | 90   |
| Mead, Dr. Gilbert L.                  |      |
| —direct .....                         | 112  |
| Mead, Mrs. Josie Alice                |      |
| —direct .....                         | 87   |
| Sablich, Marco                        |      |
| —direct .....                         | 110  |
| —cross .....                          | 111  |
| Scott, Arthur W.                      |      |
| —direct .....                         | 158  |
| —cross .....                          | 160  |
| Stabeck, Henry M.                     |      |
| —direct .....                         | 85   |
| —cross .....                          | 86   |
| —redirect .....                       | 87   |
| Vincent, Dr. W. T. S.                 |      |
| —direct .....                         | 96   |
| —cross .....                          | 102  |
| —recalled, direct .....               | 260  |
| —recalled, cross .....                | 261  |



## Index

Page

## Witnesses for Defendants—(Continued):

Von Hoover, Dr. C. E.

|                 |          |
|-----------------|----------|
| —direct .....   | 112, 132 |
| —cross .....    | 151      |
| —redirect ..... | 155      |
| —recross .....  | 155      |

Welch, Mrs. Wilma

|               |     |
|---------------|-----|
| —direct ..... | 158 |
| —cross .....  | 158 |

Woodman, Dr. William G.

|                 |    |
|-----------------|----|
| —direct .....   | 79 |
| —cross .....    | 81 |
| —redirect ..... | 82 |

## Witnesses for United States of America:

Anderson, Harry Y.

|                 |     |
|-----------------|-----|
| —direct .....   | 266 |
| —cross .....    | 267 |
| —redirect ..... | 267 |

Baumgartner, Homer H.

|                         |     |
|-------------------------|-----|
| —rebuttal, direct ..... | 261 |
| —cross .....            | 262 |
| —redirect .....         | 263 |

Buell, Andrew G.

|                 |    |
|-----------------|----|
| —direct .....   | 18 |
| —cross .....    | 29 |
| —redirect ..... | 33 |

| Index                               | Page |
|-------------------------------------|------|
| Witnesses for U. S. A.—(Continued): |      |
| Fender, Dr. Frederick A.            |      |
| —direct .....                       | 75   |
| —cross .....                        | 77   |
| Guidry, Amos J.                     |      |
| —direct .....                       | 264  |
| —cross .....                        | 265  |
| —redirect .....                     | 266  |
| Hosford, Mrs. Mary Ellen            |      |
| —direct .....                       | 267  |
| —cross .....                        | 268  |
| Kathe, Dr. John B.                  |      |
| —direct .....                       | 271  |
| —cross .....                        | 271  |
| Kulchar, Dr. George V.              |      |
| —direct .....                       | 70   |
| —cross .....                        | 74   |
| Leone, Nicholas C.                  |      |
| —direct .....                       | 45   |
| —cross .....                        | 45   |
| —redirect .....                     | 46   |
| —recross .....                      | 49   |
| Milne, William                      |      |
| —direct .....                       | 270  |
| —cross .....                        | 270  |

**Index**

**Page**

Witnesses for U. S. A.—(Continued):

**Mix, Dr. Anna E.**

|                 |    |
|-----------------|----|
| —direct .....   | 39 |
| —cross .....    | 40 |
| —redirect ..... | 41 |
| —recross .....  | 41 |

**Morgan, Dr. James W.**

|                 |    |
|-----------------|----|
| —direct .....   | 65 |
| —cross .....    | 66 |
| —redirect ..... | 68 |

**Smith, Mary**

|                 |    |
|-----------------|----|
| —direct .....   | 42 |
| —cross .....    | 42 |
| —redirect ..... | 45 |

**Tainter, Dr. Maurice K.**

|               |    |
|---------------|----|
| —direct ..... | 50 |
| —cross .....  | 59 |

**Templeton, Dr. Harry John**

|               |    |
|---------------|----|
| —direct ..... | 68 |
| —cross .....  | 70 |

**Yakowitz, Morris L.**

|                 |    |
|-----------------|----|
| —direct .....   | 33 |
| —cross .....    | 35 |
| —redirect ..... | 37 |
| —recross .....  | 38 |

|   |     |
|---|-----|
| Certificate of Clerk to Transcript of Record<br>on Appeal ..... | 378 |
|---|-----|

| Index  | Page     |
|--|----------|
| Information .....  | 2        |
| Instructions to Clerk Under Rule 19 (CCA)...                                   | 380      |
| Judgment as to Chester Walker Colgrove.....                                    | 310      |
| Judgment as to Empire Oil & Gas Corporation                                    | 308      |
| Minute Order—Arraignment and Pleas.....  | 13       |
| Minute Order—Denying Motions for New Trial<br>and in Arrest of Judgment.....   | 307      |
| Motion for New Trial.....  | 302      |
| Motion in Arrest of Judgment.....  | 304      |
| Names and Addresses of Attorneys of Record..                                   | 1        |
| Notice of Appeal by Chester Walker Colgrove                                    | 320      |
| Notice of Appeal by Empire Oil and Gas Cor-<br>poration .....                  | 312      |
| Order Authorizing Deposit of Fine in Escrow<br>Pending Appeal .....            | 327      |
| Order Denying Motion for New Trial and Mo-<br>tion in Arrest of Judgment.....  | 307      |
| Orders Extending Time Within Which to Set-<br>tle Bill of Exceptions, etc..... | 330, 332 |
| Order for Certification of Original Exhibits...                                | 375      |
| Praecipe (DC) .....  | 376      |
| Statement of Points and Designation of Record<br>(CCA) .....                   | 380      |

Index

Page

|  |          |
|--|----------|
| Stipulation for Certification of Original Exhibits .....                                 | 375      |
| Stipulations for Extension of Time for Filing and Settlement of Bill of Exceptions, etc. | 328, 331 |
| Verdict .....  | 302      |



NAMES AND ADDRESSES OF ATTORNEYS

MESSRS. WALTER M. GLEASON,

MORGAN J. DOYLE,

2314 Shell Building,  
San Francisco, Calif.

WILLIAM B. ACTON,

486 California Street,  
San Francisco, Calif.

Attorneys for Defendants and  
Appellants.

MESSRS. FRANK J. HENNESSY,

United States Attorney,  
Northern District of California.

A. J. ZIRPOLI,

Assistant United States Attorney,  
Northern District of California.

Post Office Building,  
San Francisco, California.

Attorneys for Plaintiff and Appellee.

In the District Court of the United States Within  
and for the Northern District of California,  
Southern Division

F. D. C. No. 6408

March Term, 1942.

UNITED STATES OF AMERICA,

vs.

EMPIRE OIL AND GAS CORPORATION, a  
corporation, and CHESTER WALKER COL-  
GROVE, trading as Colusa Products Company.

INFORMATION No.

(27554-R)

Frank J. Hennessy, Attorney for the United States in and for the Northern District of California, who for the said United States in this behalf prosecutes, in his own proper person comes into court on this 24th day of March, A. D., nineteen hundred and forty-two, and with leave of court first had and obtained, gives the court here to understand and be informed as follows, to wit:

That Empire Oil and Gas Corporation, a corporation organized and existing under the laws of the State of Nevada, and Chester Walker Colgrove, President and Treasurer, said corporation trading under the fictitious name of Colusa Products Company, at Berkeley, State of California, did, within the Southern Division of the Northern Judicial District of California, and within the jurisdiction



of this court, on or about the 31st day of January, in the year nineteen hundred and forty-one, then and there, in violation of the Act of Congress of June 25, 1938, known as the Federal Food, Drug, and Cosmetic Act (52 Statutes at Large, 1040; 21 U. S. C., 331 (a), 352 (a),) unlawfully introduce and deliver for introduction in interstate commerce, from Berkeley, State of California, to Mountainair, State of New Mexico, consigned to Snapp's Drug Store, [1\*] a certain package containing a number of bottles, each bottle containing a drug within the meaning of Section 201 (g) (2) of said act.

Displayed upon said bottles was the following labeling:

COLUSA

NATURAL OIL

A NATURAL

UNREFINED

PETROLEUM OIL

Containing

Sulphonated

Hydrocarbons

For External Use Only

Net Cont. 2 Fl. Ozs. (or "1/2 Fl. Oz.")

COLUSA

PRODUCTS CO.

WILLIAMS, CALIF.

An emollient natural petroleum product produced in Colusa County, California.

---

\* Page numbering appearing at foot of page of original certified Transcript of Record.

**DIRECTIONS:** Apply to affected parts and rub it in thoroughly for relieving the irritation of minor cuts and burns and to relieve the itching and discomfort of minor skin abrasions.

Enclosed in said package and accompanying said drug was a certain circular and newspaper mat, which contained, among others, the following statements:

(Circular):

In 1934, "Walter" worked in one of Los Angeles' swanky clothing stores. His hands and feet became afflicted with Athlete's Foot or Ringworm. The resulting discomfort, pain and unsightliness became so bad that he was forced to give up his position. In 1940 a friend induced him to try "Colusa Natural Oil." Six weeks later "Walter" was back at work selling on his old job and he is also doing a lot of selling of "Colusa Natural Oil." He tells why—"That oil sure helped my condition. It not only relieved the irritating, painful itching, but it helped to relieve the unsightly blemishes on my hands so I was able to go back to work."

\* \* \* \* \*

\* \* \* COLUSA NATURAL OIL CAPSULES

\* \* \* have an alkalizing action. \* \* \*

\* \* \* \* \*

\* \* \* great healing qualities. \* \* \* [2]

Nature has so wonderfully blended this natural alkaline oil that it is received by the

human body and seems as acceptable as food or sunshine.

\* \* \* \* \*

### LOOK AT THESE HANDS!

Before Treatment with Colusa Natural Oil

(February 28, 1940)

Twelve days after starting treatment with

Colusa Natural Oil (March 11, 1940)

### ECZEMA

“Colusa Natural Oil—used externally—and Colusa Natural Oil Capsules—taken internally—are the only treatments I used in clearing up this terrible condition in TWELVE DAYS as pictured above.”

\* \* \* \* \*

COLUSA NATURAL OIL is credited by other users with producing relatively as remarkable results as above pictured in relieving irritation of external ACNE—ECZEMA—PSORIASIS—ATHLETE’S FOOT or RINGWORM—POISON IVY— \* \* \* VARICOSE ULCERS—BURNS and CUTS.

### THERAPEUTIC ACTION

Colusa Natural Oil acts on surface skin irritations as a stimulant, increasing circulation and thereby aiding in the healing. It has penetrating qualities and the reducing properties of sulphur which helps relieve the discomfort and pain of such conditions. Its detergent and mild antiseptic action inhibits the spreading of skin irritations and helps to restore the normal skin surface. \* \* \*

(Newspaper Mat) :

Radium is of course noted for being worth a fortune per ounce, but a strange oil from the hills in Colusa County, California, takes the prize for Petroleum values.

Although it is drilled for like ordinary wells, this oil comes in a sulphonated solution and only one gallon of oil is recovered from each 2500 to 5000 gallons of fluid pumped from the wells, which yield one to five gallons of oil per day.

\* \* \* \* \*

\* \* \* this Colusa product carries about 4% of Iodine \* \* \* .07% Sulphur, a trace of camphor and turpentine \* \* \* radium emanations \* \* \*  
 "Radium emanation is accepted as harmoniously in the body as is sunlight by the withering [3] plant." "The emanation is taken up in the blood and as quick as lightning, goes to all parts of the body where it kills or checks the disease germs." \* \* \*

That said drug, when introduced and delivered for introduction in interstate commerce, as aforesaid, was then and there misbranded within the meaning of said Act of Congress, in that the statements aforesaid, regarding the efficacy of said drug in the cure, mitigation, treatment or prevention of disease in man, appearing in the circular, as aforesaid, were false and misleading, in this, that the said statements represented and suggested that said drug, when used alone or in conjunction with

Colusa Natural Oil Capsules, would be efficacious in the treatment of eezema, psoriasis, acne, ringworm, Athlete's Foot, burns, cuts, poison ivy and varicose ulcers; would act on surface skin irritations as a stimulant and would increase circulation and aid in healing; would be efficacious to relieve discomfort and pain; would be efficacious to inhibit the spreading of skin irritations and to restore the normal skin surface, and would be efficacious to kill or check disease germs; whereas, in truth and in fact, said drug, when used along or in conjunction with Colusa Natural Oil Capsules, would not be efficacious in the treatment of eezema, psoriasis, acne, ringworm, Athlete's Foot, burns, cuts, poison ivy or varicose ulcers; would not act on surface skin irritations as a stimulant, would not increase circulation, and would not aid in healing; would not be efficacious to relieve discomfort or pain; inhibit the spreading of skin irritations, or restore the normal skin surface, and would not be efficacious to kill or check disease germs; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

## COUNT II.

And the said United States Attorney, in manner and form as [4] aforesaid, also gives the court here to understand and be informed that Empire Oil and Gas Corporation, a corporation organized and existing under the laws of the State of Nevada, and Chester Walker Colgrove, President and Treasurer,

said corporation trading under the fictitious name of Colusa Products Company, at Berkeley, State of California, did, within the Southern Division of the Northern Judicial District of California, and within the jurisdiction of this court, on or about the 31st day of January, in the year nineteen hundred and forty-one, then and there, in violation of the Act of Congress of June 25, 1938, known as the Federal Food, Drug, and Cosmetic Act (52 Statutes at Large, 1040; 21 U. S. C., 331 (a), 352 (a),) unlawfully introduce and deliver for introduction in interstate commerce, from Berkeley, State of California, to Mountainair, State of New Mexico, consigned to Snapp's Drug Store, a certain package containing a number of bottles, each bottle containing a drug within the meaning of Section 201 (g) (2) of said act.

Displayed upon said bottles was the following labeling:

COLUSA  
NATURAL OIL  
A NATURAL  
UNREFINED  
PETROLEUM OIL  
Containing  
Sulphonated  
Hydrocarbons  
100 Capsules (or "30 Capsules")

COLUSA  
PRODUCTS CO.  
WILLIAMS, CALIF.

A mild astringent to mucous membranes.

**DIRECTIONS**

Take one capsule three times daily.

Half hour before meals.

Enclosed in said package and accompanying said drug was a certain circular and a newspaper mat, which contained, among others, the statements more fully described in the first count of this information, which said description in said first count is, by [5] reference, hereby incorporated in this count.

That said drug, when introduced and delivered for introduction in interstate commerce, as aforesaid, was then and there misbranded within the meaning of said Act of Congress, in that the statements aforesaid, regarding the efficacy of said drug in the cure, mitigation, treatment or prevention of disease in man, appearing in the circular, as aforesaid, were false and misleading, in this, that the said statements represented and suggested that said drug, when used alone or in conjunction with Colusa Natural Oil, would be efficacious in the treatment of eczema, psoriasis, acne, ringworm, Athlete's Foot, burns, cuts, poison ivy and varicose ulcers; would act on surface skin irritations as a stimulant and would increase circulation and aid in healing; would be efficacious to relieve discomfort and pain; would be efficacious to inhibit the spreading of skin irritations and to restore the normal skin surface; and would be efficacious to kill or check disease germs, whereas, in truth and in fact, said drug,

when used alone or in conjunction with Colusa Natural Oil, would not be efficacious in the treatment of eczema, psoriasis, acne, ringworm, Athlete's Foot, burns, cuts, poison ivy or varicose ulcers; would not act on surface skin irritations as a stimulant, would not increase circulation, and would not aid in healing; would not be efficacious to relieve discomfort or pain, inhibit the spreading of skin irritations, or restore the normal skin surface, and would not be efficacious to kill or check disease germs; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

### COUNT III.

And the said United States Attorney, in manner and form as aforesaid, also gives the court here to understand and be informed [6] that Empire Oil and Gas Corporation, a corporation organized and existing under the laws of the State of Nevada, and Chester Walker Colgrove, President and Treasurer, said corporation trading under the fictitious name of Colusa Products Company, at Berkeley, State of California, did, within the Southern Division of the Northern Judicial District of California, and within the jurisdiction of this court, on or about the 31st day of January, in the year nineteen hundred and forty-one, then and there, in violation of the Act of Congress of June 25, 1938, known as the Federal Food, Drug, and Cosmetic Act (52 Statutes at Large, 1040; 21 U. S. C., 331 (a), 352



(a), (b) (2),) unlawfully introduce and deliver for introduction in interstate commerce, from Berkeley, State of California, to Mountainair, State of New Mexico, consigned to Snapp's Drug Store, a certain package, containing a number of jars, each containing a drug within the meaning of Section 201 (g) (2) of said act.

Displayed upon said jars was the following labeling:

COLUSA  
NATURAL OIL  
HEMORRHOID OINTMENT  
Contains Colusa Natural Oil, a Natural Unrefined Petroleum Oil, containing sulphonated hydrocarbons, zinc oxide, benzocain, menthol, camphor, petrolatum, lanolin, yellow beeswax.  
Manufactured For and Distributed By  
COLUSA PRODUCTS COMPANY  
Williams, California

Enclosed in said package and accompanying said drug was a certain circular, which contained, among others, the following statements:

COLUSA NATURAL OIL HEMORRHOID  
OR PILES OINTMENT  
For external use in relieving the discomforting irritations of HEMORRHOIDS or PILES \* \* \*

That said drug, when introduced and delivered for introduction [7] in interstate commerce, as aforesaid, was then and there misbranded within the meaning of said Act of Congress, in that the

statements aforesaid, appearing on the jar label and in the circular, as aforesaid, regarding the efficacy of said drug in the cure, mitigation, treatment or prevention of disease in man, were false and misleading, in this, that the said statements represented and suggested that said drug would be efficacious in the treatment of hemorrhoids and piles, whereas, in truth and in fact, said drug would not be efficacious in the treatment of hemorrhoids or piles;

That said drug was further misbranded in that it was in package form and its label did not bear an accurate statement of the quantity of the contents in terms of weight or measure;

All of which was and is contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

(Signed) FRANK J. HENNESSY,  
United States Attorney  
For the Northern District  
of California, Southern  
Division.

[Endorsed]: Filed Mar. 24, 1942. [8]

District Court of the United States  
Northern District of California  
Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Friday, the 10th day of April, in the year of our Lord one thousand nine hundred and forty-two.

Present: The Honorable Michael J. Roche, District Judge.

[Title of Cause.]

MINUTE ORDER  
Pleas of "Not Guilty"

This case came on this day for the arraignment of the defendants. The defendant Chester Walker Colgrove was present in Court. Walter Gleason, Esq., was present as Attorney for the defendants. Wilbur F. Mathewson, Esq., Assistant United States Attorney, was present for and on behalf of the United States. Thereupon the defendant Empire Oil and Gas Corporation, a corporation, through Chester Walker Colgrove, its President, and the defendant Chester Walker Colgrove, individually, were duly arraigned, waived the reading of the Information, and thereupon said defendant Empire Oil and Gas Corporation, a corporation, through Chester Walker Colgrove, and the defendant Chester Walker Colgrove entered pleas of "Not Guilty" to the Information, which said pleas

were ordered entered. After hearing the Attorneys, It Is Ordered that this case be and the same is hereby set for June 16, 1942, for trial. [9]

---

[Title of District Court and Cause.]

APPELLANTS' ENGROSSED BILL OF  
EXCEPTIONS

Be it remembered: That on or about the 24th day of March, 1942, the United States Attorney, in and for the Northern District of California, Southern Division, returned in this court his information against the defendants in the above entitled cause, charging them with three counts, to-wit, the first count being a charge of violating the Act of Congress of June 25, 1938, known as the Federal Food, Drug and Cosmetic Act (52 Statutes at Large, 1040; 21 U. S. C. 331 (a), 352 (a),) by sending in interstate commerce a package containing a number of allegedly misbranded bottles of Colusa Natural Oil; the second count being a charge of violating said statute aforementioned by sending in interstate commerce an allegedly misbranded package containing a number of bottles of Colusa Natural Oil Capsules; the third count being a charge of violating said Act of Congress aforementioned by sending in [10] interstate commerce a package containing a number of jars of Colusa Natural Oil Hemorrhoid Ointment, alleged to be misbranded in that the statements appearing on the label of said

jars were alleged to be false and misleading, and also alleged to be misbranded in that said jars did not bear an accurate statement of the quantity of the contents in terms of weight or measure; that thereafter said defendants appeared in said court and were duly arraigned; and

Be it further remembered: That thereafter, and on the 10th day of April, 1942, said defendants pleaded not guilty as to each of the three counts, and the cause being at issue, the same came on for trial on Tuesday, June 23, 1942, before the Honorable Michael J. Roche, United States District Judge, the United States being represented in court by A. J. Zirpoli, Esq., Assistant United States Attorney, and the defendants being personally present and represented by Walter M. Gleason, Esq., Morgan J. Doyle, Esq., and William B. Acton, Esq., and after the due empanelling of a jury, the following proceedings were had.

Thereupon, Mr. Zirpoli made an opening statement to the jury stating what the plaintiff expected to prove, and immediately thereafter Mr. Gleason made an opening statement to the jury on behalf of said defendants. Thereupon, the plaintiff and defendants entered certain stipulations as follows:

1. That defendant, Empire Oil and Gas Corporation is a Nevada corporation, and that Chester Walker Colgrove is its president and treasurer, and that it trades under the fictitious name of Colusa Products Company of Berkeley, California.

2. That on or about January 31, 1941, defend-

ants did introduce and deliver for introduction in interstate commerce from Berkeley, California, to Mountainair, New Mexico, consigned to Snapp's Drugstore, a certain package containing a number of bottles, each bottle containing a drug, and displayed upon said bottles the [11] label which appears in the first count.

3. That if Mr. W. S. Green were called as a witness, he would testify that he is an inspector of the Federal Food and Drug Administration; that on February 13, 1941, he collected a sample from Snapp's Drugstore at Mountainair, New Mexico, of a certain drug; that he then privately sealed the sample and then transmitted the same to the Federal Food and Drug Administration, and marked 65,381-E, 2/13/41 W. S. Green.

4. That if the proprietor of Snapp's Drugstore were called as a witness he would testify that the sample referred to and marked 65,381-E was part of the shipment made on January 31, 1941 from Berkeley, California, to Mountainair, New Mexico, consigned to Snapp's Drugstore.

5. That on January 31, 1941, defendants did introduce and deliver for introduction in interstate commerce from Berkeley, California, to Mountainair, New Mexico, a certain package containing a number of bottles, each containing a drug, and that displayed was that which appears in the second count of the information and the labeling pertaining to the capsules.

6. That Inspector Green collected a sample at

Snapp's Drugstore which was part of the interstate shipment referred to and the same was numbered 65,382-E.

7. That if the proprietor of Snapp's Drugstore were called as a witness he would testify that the sample referred to and marked 65,382-E was part of said shipment and that it was transmitted by Inspector Green to the Federal Food and Drug Administration in the form received by him.

8. That on January 31, 1941, defendants did introduce and deliver for introduction in interstate commerce, from Berkeley, California, to Mountain-air, New Mexico, a certain package containing a number of jars, each jar containing a drug, and displayed upon the jars the label, "Colusa Natural Oil," being the label [12] appearing in the third count of the information; that a circular was contained therein which recites, "Colusa Natural Oil Hemorrhoid or Piles Ointment. For external use in relieving the discomforting irritations of hemorrhoids or piles."

9. That Inspector Green collected a sample at Snapp's Drugstore which was part of said interstate shipment referred to immediately hereinabove, and the same was numbered "65,383-E, 2/13/41."

10. That if the proprietor of Snapp's Drugstore were called as a witness he would testify that the sample referred to and marked 65,383-E was part of said shipment and that it was transmitted to the Federal Food and Drug Administration in the form received by him.

11. That in the large box containing this shipment there was enclosed in this instance the newspaper mat which is recited in detail in the first count.

---

Thereupon, the plaintiff called

ANDREW G. BUELL,

who testified as follows:

I am a chemist for the Food and Drug Administration and have been such for fifteen years; I hold a degree of Bachelor of Science in Chemical Engineering from the University of Nebraska, 1924; after graduation I worked in the United States Patent Office for about a year and a half in the Chemical Engineering Division. In 1927 I was appointed a chemist in the Food and Drug Administration.

“Q. Have you had any experience in the analysis of petroleum oil?”

“A. Yes sir, in college I had two courses.”

I made an examination of the product known as Colusa Oil in February, 1941; I made complete notes of my examination which I now have with me; I received this sample, marked 65,381-E, which was then introduced in evidence and marked Government Exhibit No. 1. I found that the product was a black, viscous, tarlike oil in [13] a clear glass screw-top bottle, net 2.03 fluid ounces. I made an unsulphonated residue test and found that to be



(Testimony of Andrew G. Buell.)

30 per cent; substance volatile with steam, camphor and turpentine: none was present. Iodine compounds: none was present. Alcohol extract was a trace. Material extractable with sodium hydroxide, trace. Material extractable with water, none.

On June 17, 1942, I made an additional analysis as follows: Specific gravity .985; refractive index 1.538. Non-volatile material at 100 degrees, 96.44 per cent. Ash content .04 of 1 per cent. Solubility in water, no perceptible amount. Solubility in cold concentrated sulphuric acid 22.5 per cent. Total nitrogen .18 per cent. And I also made a boiling or distillation range. The initial boiling point was 220 degrees centigrade, and the reaction of the product to litmus was neutral.

“Q. You have given us this last chemical analysis. Will you tell us what it means now in terms of a layman. What *what* this product?”

“Mr. Gleason: Just a moment. If the court please, we object to that on the ground that it is incompetent, irrelevant and immaterial. This gentleman is called as a scientist to testify as to the analytical contents of this product. He has given us those contents. They speak for themselves, and any attempt on the part of this witness to state that this is ordinary crude oil, when there are a thousand types of crude oil is, we believe, utterly incompetent.

“The Court: The objection will be overruled.

“Mr. Doyle: Exception to the ruling.

(Testimony of Andrew G. Buell.)

“The Court: Let the record note an exception.”

The witness continuing: The product is a crude petroleum oil, and the determinations I made were to substantiate this fact; this product does not contain sulphonated hydrocarbons, has no alkaline action, is not a natural alkaline oil; it is not a [14] sulphonated solution; I found no camphor or turpentine; I found .75 of 1 per cent of total sulphur.

I examined the capsules, number 65,382-E; they came to me sealed. (The bag and contents were admitted in evidence and marked Government's Exhibit No. 2.) I made a limited examination of the oil in these capsules. The contents of the capsules has the appearance of crude oil and appears to be the same as 65,381-E; the odor and taste is associated with crude oil. Another chemist from the Federal Food and Drug Administration, Maurice L. Yakowitz, made an examination with me. I also made an examination of the ointment numbered 65,383-E. I broke the seal and made an examination of the contents. I found a soft, light brown ointment in a small, blue glass, screw-top jar; net weight was .73 ounces. The zinc oxide content was 25.93 per cent; benzocaine content was .94 per cent. The volatile oils, which consist of menthol and camphor, was approximately 4.5 per cent by weight. The presence of lanolin or beeswax is indicated. My conclusion was the product is a light brown ointment consisting essentially of zinc oxide, benzocaine, camphor, menthol, crude oil, lanolin or beeswax.

(Testimony of Andrew G. Buell.)

The two jars containing the hemorrhoid ointment were then admitted in evidence as Government's Exhibit No. 3. The label of Colusa Natural Oil 65,381 with the Food and Drug seal was then admitted in evidence as Government's Exhibit No. 4. The labels on the capsules were then admitted in evidence as Government's Exhibit No. 5. The label and seal marked 65,383-E were then admitted in evidence as Government's Exhibit No. 6. The circular which is numbered 65,381-E and which was included in the shipment was admitted in evidence as Government's Exhibit No. 7.

GOVERNMENT'S EXHIBIT No. 7

65381-3-E 2/13/41

[Illegible]

This circular included in shipment



COLUSA NATURAL OIL

100% Nature's Product

Bottled just as it comes

from the ground

Nature's Home Remedy

A good customer writes—

“Every fire station and every kitchen in the land should have a supply of this oil on hand for emergency use on minor Burns and Cuts.”

COLUSA PRODUCTS CO.

Williams, California, U. S. A.

Colusa Natural Oil

Is not a patent medicine. Scientists and physicians are agreed that in the millions of years nature used in the creation of this oil, it acquired elements which explain its remarkable therapeutic quality.

According to some of the historical writings, the Indians gathered at small springs from which the oil seeped out of the ground, and worshipped with ceremony because of its great healing qualities. Its more recent fame is attested by physicians who have observed astounding results from its use and by users who have experienced remarkable benefits.

Nature has so wonderfully blended this natural alkaline oil that it is received by the human body and seems as acceptable as food or sunshine.

Guarantee Whether you buy Colusa Natural Oil for external use or the capsules for internal use or the ointment for hemorrhoids or piles, if you are not satisfied with the relief you get in one week, take the merchandise with the sales slip back to the druggist you bought it from. He is authorized by us to refund your money.

COLUSA PRODUCTS CO.

Williams, California, U. S. A.

Do You Enjoy Eating?

If not, try

Colusa Natural

Oil Capsules

For Internal Use

Seven Drops of

Colusa Natural Oil

in Each Capsule

They have a mild astringent action on mucous membrane, and they have an alkalizing action. Take one capsule three times daily—preferably a half hour before meals.

Colusa Natural Oil

Hemorrhoid or Piles Ointment

For external use in relieving the  
discomforting irritations of

Hemorrhoids or Piles

Put up in tubes with a tip perforated  
on sides and end for rectal insertion





Before Treatment with Colusa Natural Oil  
(February 28, 1940)

#### ECZEMA

"Colusa Natural Oil—used externally—and Colusa Natural Oil Capsules—taken internally—are the only treatments I used in clearing up this terrible condition in Twelve Days as pictured above."

(Signed) HOMER H. BAUMGARTNER  
408 South Fremont, Los  
Angeles

Subscribed and sworn to before me as notary  
public, March 12, 1940.

(Signed) OLIVE M. BERREAU,  
Notary Public

(My Commission Expires August 6, 1940.)



Twelve days after starting treatment with  
Colusa Natural Oil (March 11, 1940)

#### COLUSA NATURAL OIL

is credited by other users with producing relatively as remarkable results as above pictured in relieving irritation of external Aene - Eczema - Psoriasis Athlete's Foot or Ringworm - Poison Ivy - Chapped Hands - Sunburn - Varicose Ulcers - Burns and Cuts

#### Therapeutic Action

Colusa Natural Oil acts on surface skin irritations as a stimulant, increasing circulation and thereby aiding in the healing. It has penetrating qualities and the reducing properties of sulphur which helps relieve the discomfort and pain of such conditions. Its detergent and mild antiseptic action inhibits the spreading of skin irritations and helps to restore the normal skin surface. Colusa Natural

Oil does not contain any gasoline, kerosene, naphtha, asphaltum or paraffin. Warning—It Stains Linen. In using it externally a small amount goes a long way. It is a good spreader and very penetrating. Rub and Rub the Oil Thoroughly Into the Skin Two or Three Times Daily. If your skin is very tender, dilute Colusa Natural Oil one-third to one-half with olive oil.

COLUSA NATURAL OIL





## Why Colusa Natural Oil Is So Costly to Produce!



Well No. 1 Showing Pumping Pier Above Flood Water.



Colusa Natural Oil comes in solution with water. Wells No. 1, 2 and 3, and receiving tanks, into which thousands of gallons of water are pumped for each gallon of oil recovered.



Each of the big tanks holds over 5,000 gallons but less than two gallons of oil are produced for each 5,000 gallons of water pumped into them.



Well No. 4 now down about 900 feet. Pay oil expected soon.

## Why Colusa Natural Oil Is Not Expensive to Use!

Results Count—An Illustrative Case. In 1934, "Walter" worked in one of Los Angeles' swanky clothing stores. His hands and feet became afflicted with Athlete's Foot or Ringworm. The resulting discomfort, pain and unsightliness became so bad that he was forced to give up his position. In 1940

a friend induced him to try "Colusa Natural Oil." Six weeks later "Walter" was back at work selling on his old job and he is also doing a lot of selling of "Colusa Natural Oil." He tells why—"That oil sure helped my condition. It not only relieved the irritating, painful itching, but it helped to relieve the unsightly blemishes on my hands so I was able to go back to work."

[Endorsed]: Filed June 23, 1942.

(Testimony of Andrew G. Buell.)

The newspaper mat was then admitted in evidence as Government's Exhibit No. 8.

GOVERNMENT'S EXHIBIT NO. 8

65381-2-E 2/13/41 [Illegible]

13

**CALIFORNIA OIL  
WORTH \$10,000  
PER BARREL**

**FAMOUS FOR  
MEDICINAL VALUES**

Radium is of course noted for being worth a fortune per ounce, but a strange oil from the hills in Colusa County, California, takes the prize for Petroleum values.

Although it is drilled for like ordinary oil wells, this oil comes in a sulphonated solution and only one gallon of oil is recovered from each 2500 to 5000 gallons of fluid pumped from the wells, which yield one to five gallons of oil per day.

It has been famous for generations in Colusa and adjoining counties in California, where people are known to have driven 150 miles and labor half a day to gather half an ounce of it where it seeped from the ground, in order to treat their ailments.

Containing no gasoline, kerosene, naphtha, asphaltum or paraffine, which are common to ordinary crude oil, this Colusa product carries about 4% of Iodine, 3% "Icthyol", .07% Sulphur, a trace of camphor and turpentine, nitrogen gas and radium emanations - but **no radium**. Science papers by eminent physicians state that, "Radium emanation is accepted as harmoniously in the body as is sunlight by the withering plant". "The emanation is taken up in the blood and as quick as lightning, goes to all parts of the body where it kills or checks the disease germs." This remarkable oil is now sold by

This newspaper mat included in package with the drugs.

(Testimony of Andrew G. Buell.)

**LOOK** *at this*  
**HAND**  
 ECZEMA



**BEFORE — AFTER**  
 12 DAYS TREATMENT WITH  
*Colusa Natural Oil*  
**100% NATURE'S PRODUCT**  
 EQUALLY REMARKABLE  
 RESULTS IN CASES OF  
**ATHLETES FOOT • PSORIASIS**  
**ACNE • VARICOSE ULCERS**

Because of its great healing qualities this rare oil is famous in California where only four small wells produce but a few gallons a day of it

**ENJOY EATING AGAIN**  
 Colusa Natural Oil is also put up in Tasteless Capsules. Many users have written "Now Enjoy Eating Again" . . . "Blessed Relief with Colusa Natural Oil Capsules" . . . "Marvelous Results" . . . Etc.

**HEMORRHOID or PILES**  
 A wonderful Hemorrhoid or Piles Ointment is made by using 50% Colusa Oil. Many have found one to three applications sufficient

**SOLD IN \$1 AND \$3 SIZES**  
 ON MONEY BACK GUARANTEE

[Endorsed]: U. S. Dist. Ct. N. D. Cal. No. 27554-R. U. S. Ex. No. 8 Filed June 23, 1942. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

(Testimony of Andrew G. Buell.)

This completed the direct examination of the witness, and the witness on cross examination testified: [15]

“Mr. Gleason: Q. Mr. Buell, are you a petroleum chemist?”

“A. I am a food and drug chemist—food, drugs and cosmetics I work on.

“Q. Have you ever been engaged in the analysis of petroleum oils for any oil company?”

“A. Not for any oil company. I analyzed petroleum oils in college.”

After my graduation from college I spent a year and a half in the patent office, and then went to work for the Food and Drug Department. I did no analyzing of petroleum oils in the patent office. My college course included the study of the hydrocarbon family. I don't recall ever before analyzing a product exactly like this before. By crude oil I mean an oil as it is pumped from the ground or emitted from the ground. I know there are many varieties of crude oil and I agree that the hydrocarbon family is a very complicated family. The formula for ordinary alcohol is  $C_2H_5OH$ . That same formula in an empirical way is used to express other hydrocarbons.

I am also familiar with  $C_6H_{12}O_6$  which possibly stands for sixty-four different varieties of compounds found in petroleum oil. I know what fractional distillation is. It is separating crude oil into

(Testimony of Andrew G. Buell.)

various components. These components are known as fractions. I know it takes several months of analysis to accomplish the determination of their constituent parts. I know what ichthyol is. It is prepared by distilling shale which contains a large proportion of unsaturated hydrocarbons. These are then treated with concentrated sulphuric acid. They are then neutralized with ammonia and this product is known as ichthyol. Ichthyol in its natural form is sulphonated. I know that ichthyol has been used in Austria for over a century for medicinal purposes. Ichthyol is not found in a natural state; it is manufactured by treating the distillate of shale with sulphuric acid. [16]

I tested the samples submitted to me to determine if ichthyol was present. The same formula used to determine the presence of ichthyol is used to determine sulphonated oil. Turning to my notes, I made my first test on February 18, 1941. That test was made in the Food and Drug Laboratory, 512 Federal Building, San Francisco. This took approximately two days; not two continuous days, over two days.

I received the sample on February 18th and submitted my report on the 19th. I received the sample from the chief chemist and I examined the contents and made a net contents examination; I examined as to oiliness and color; I tasted it; the next step was to get the unsulphonated residue by this method. Five cubic centimeters of the oil was pip-

(Testimony of Andrew G. Buell.)

itted into a Babcock bottle and 20 CC's of sulphonated mixture, which consists of concentrated sulphuric acid in which sulphur trioxide is dissolved, and this allowed to work, and then it is heated up to 60 degrees for a period of five minutes, and then the contents are centrifuged for a period of 10 to 15 minutes, and then the volume of the oil that does not go into solution in the acid is read off, and from that value the percentage of unsulphonated residue is calculated. That test was to determine whether it was a crude oil or not. The purpose of the test was to determine whether or not this Colusa Oil was a crude oil and that was not a test for sulphonation.

I also tested for sulphonation and for ichthyol. I cannot tell from my notes whether this was done on the 18th or 19th.

“A. The first examination for ichthyol was to take a sample of the oil and put it in a separatory funnel and add water to it, and shake it for a considerable period of time, about ten or fifteen minutes; allow the layers to separate and see if there was any of the colored sulphonated products in the water layer. And this test showed that the water did not extract any colored compounds; therefore, there was no sulphonated material present.” [17]

“A. An oil that is sulphonated will turn—the sulphonated oil will be colored and will be water-soluble; therefore, it will be extracted from the oil phase into the water phase, making the water

(Testimony of Andrew G. Buell.)

colored black or brown, depending on the amount of sulphonated compounds present.”

I tested for camphor by the steam distillation of the original oil. There was no odor or no indication of any camphor or turpentine. I just made the notation on the analytical sheet that the steam distillation—“steam distillation content only kerosene.” That is all the notes on that particular test.

I also tested for turpentine by steam distillation and, as the distillation progressed, the odor of the distillate was constantly observed and no indication of turpentine was apparent. I relied on my sense of smell entirely; that is the most reliable test.

“Mr. Doyle: We will ask to strike the last assertion or voluntary statement of the witness as having no foundation on the part of this witness, at any rate, as to whether this is the most reliable test or not, the sense of smell, for a chemist.

“The Court: Keep in mind he is a chemist.

“Mr. Doyle: Yes, your Honor.

“The Court: He says clearly that is the best method of ascertaining.

“Mr. Doyle: We will take the ruling.

“The Court: Let the question and answer stand.

“Mr. Doyle: Exception, if your Honor please.

“Mr. Gleason: Q. Did you use the same method for determining the presence of camphor, that is, by simply smelling it? (The witness) A. Yes, sir.”

The cross examination of the witness was then



(Testimony of Andrew G. Buell.)

concluded and on redirect examination he further testified: [18]

There was no ichthyol present; I found no sulphonated hydrocarbons present. Camphor does not occur in crude petroleum. I tested for astringent qualities by putting some in my mouth and it had no astringent effect at all.

“Mr. Zirpoli: You gave us one bottle, which is bottle No. 1 here in evidence, and which was the bottle used by you for examination. I now show you a seal and ask you if that is your signature on that.       A. It is, sir.

“Q. And that is sample No. 65,381-E?

“A. Yes, sir.”

As soon as the sample came, I sealed it and transmitted the sample to Washington for further tests.

The seal was then marked for identification as Government's Exhibit No. 9 for identification.

---

The Government then called

**MORRIS L. YAKOWITZ**

as a witness who, being sworn, testified as follows:

I am a chemist with the United States Food and Drug Administration. I have the degree of Bachelor of Science and Chemistry from Johns Hopkins University in 1931; I have taken various courses at the University of California since that time.

(Testimony of Morris L. Yakowitz.)

Since graduation, I have been continuously employed by the Food and Drug Administration. I worked seven months for the City Health Department of Baltimore. I have written several publications on drug analysis which have appeared in various chemical journals. I am a member of the American Chemical Society and of the association of Official Agriculture Chemists. I supervised the work of Mr. Buell, the witness who preceded me on the stand, that is, the work he did towards the end of his examination of the samples, which dealt with tests for unsulphonated portions; that was of the oil and ointment. I also made an examination of the oil in the capsules.

A sulphonated hydrocarbon would be a hydrocarbon molecule containing sulphur which is in the form of the sulphonic acid [19] grouping. There is sulphur present in the oil, but it is not present in the form of the sulphonic acid grouping.

I made an examination of the capsules and found they consisted of small, round, one-piece gelatin capsules containing a black, opaque, viscous oil; the oil has a distinctive odor suggesting that of a crude petroleum oil; each capsule contained 3.06 grains of oil, which amounts to 3 or 4 drops. The oil is a mineral oil and is not saponifiable, or is not a soap-forming oil like olive oil. The oil is entirely water insoluble. If it were a sulphonated hydrocarbon, any part of it would be soluble in water. I also determined that the oil does not contain any iodine

(Testimony of Morris L. Yakowitz.)

compounds, nor camphor, nor turpentine, nor phenol, and no sulphonated compounds. I determined it was a mineral oil. I also determined it is neither alkaline or acidic.

Thereupon, the witness was cross examined by Mr. Gleason, and testified further as follows:

The process of sulphonation would consist in treating a material such as a hydrocarbon with strong sulphuric acid so that the sulphuric acid reacted with the material such as a hydrocarbon to form a molecule in which the sulphur was contained in the form of the sulphonic acid grouping. I have had occasion to test petroleum oils for sulphonation.

My work is primarily in the field of drug chemistry and there is medicinal petroleum oil. I have read of ichthyol which is generally understood to mean the ammonium salt of a sulphonated product obtained by sulphonating the distillate of shale.

“Mr. Gleason: Q. Ichthyol is obtained by dry distillation of bituminous matter obtained from the fossils of fish, is that it?

“A. That is the starting material, but the process as you have described it is not yet complete.

“Q. I understand that. I am trying to get the process. You start with a material, do you not?

“A. Yes, sir. [20]

“Q. What is the material you start with?

“A. Well, as understood originally, it was a particular bed of shale occurring in Austria, but at

(Testimony of Morris L. Yakowitz.)

the present time other shales are used, as I understand it, for making ichthyol.

“Q. This particular bed of shale which is referred to as Austrian ichthyol, that was made of shale containing the remains of fish, was it not?”

“A. I think that is the common understanding, yes.”

I believe the distillate is treated with a strong sulphuric acid so that a reaction occurs in which sulphuric acid grouping enters into a reaction with the hydrocarbon to give the sulphonic acid. That is then neutralized with ammonium and the resulting product is known as ichthyol.

“Q. Now, sir, is it your statement as a chemist, as an expert for the Government, that there are no naturally sulphonated hydrocarbons?”

A. That is a very general statement. I would be willing to say that the particular sample of oil I examined did not contain any such material, and from my reading of the literature in this particular field it is not generally believed that petroleum oils contain any sulphonated hydrocarbons.

Q. As an expert, with your knowledge of chemistry, is it your testimony that, knowing the hydrocarbon family as you do, and knowing the sulphonation process, that nature could not sulphonate any petroleum oil?

A. That is why I qualified my statement. I believe that possibly samples might be found of such an oil, but all I know is from my reading of the

(Testimony of Morris L. Yakowitz.)

literature no one has found such an oil, and the particular sample I analyzed did not contain any such material.

Q. You have not engaged, of course, in the business of analyzing petroleum oils for the petroleum industry?      A. No, sir.

Q. On how many occasions in your work in the Pure Food and Drug Bureau have you had occasion to analyze crude oil, and by 'crude oil' we mean, of course, any natural petroleum oil? [21]

A. Well, to the best of my recollection, I have never had a sample which was identical with this particular one. However, I have often on occasions isolated a petroleum oil or so-called mineral oil from other preparations that have come into the laboratory.

Q. You mean from drug preparations that have already been manufactured?

A. I would presume so, although I believe we have had severally naturally occurring preparations of that kind.

Q. Have you ever, in the course of your work—I have forgotten the number of years—taken crude oils, petroleum oils, from the ground and analyzed them for these purposes? If so, give us the case.

A. No, sir, I have never done it.

Mr. Gleason: That is all."

The witness further testified on re-direct examination:

Shale is largely an organic deposit. The common

(Testimony of Morris L. Yakowitz.)

ichthyol we have spoken of here is a manufactured product. The sample I examined contained sulphur but not in the form of sulphur dioxide. I did not make a quantitative determination of the amount. The medicinal white oils are the ones from which impurities have been removed. This oil which I examined is one from which those impurities had not been removed, that is from a refiner's point of view.

The witness further testified on re-cross examination: The Standard Oil Company manufactures a medicinal oil for the Squibb Company. They treat it with sulphuric acid to remove the impurities and obtain a water-white, odorless and tasteless oil.

“Q. Counsel asked you as to whether or not you found sulphur dioxide present. In testing for sulphonation after the process has been completed you would not expect to find sulphur dioxide present, would you?”

A. Probably not. That is, in the process of making ichthyol, I presume there is no sulphur dioxide left in the material.” [22]

This shale out of which ichthyol is made undoubtedly contains hydrocarbons. Yes, the hydrocarbon family is a very populous family, with a great many complex and compound members. Yes, the distillation process I used is roughly the same type of distillation treatment that is used in the fractional distillation of petroleum. The process of fractional

(Testimony of Morris L. Yakowitz.)

distillation as used in the oil refineries consists in taking some crue oil and subjecting it to heat and pressure and then taking the volatile elements off and condensing it. In this fractionation these various fractions that come off in the form of volatile elements are quite complicated.

“Q. Gasoline has quite a lengthy formula, has it not?”

“A. Well, it is a mixture.

“A. Without taking too much time in details——

“Mr. Zrpoli: I can't see the relevancy of gasoline in the issue involved here.

“Mr. Gleason: Counsel, if you want to know about it, the relevancy is simply this: that out of a given crude oil there are hundreds of different compounds that are produced by this fractional process and they can't be produced in two hours' time or two days' time.

“Mr. Zirpoli: I recognize that and we all know it.

“Mr. Gleason: I think that is all.”

---

The next witness called by the Government was

DR. ANNA E. MIX

who testified as follows:

I reside in Baltimore, and am a chemist for the Food and Drug Administration in Washington; I

(Testimony of Dr. Anna E. Mix.)

am a graduate of George Washington University with the degree of Doctor of Pharmacy. After graduation I did work on chemistry, physics, bacteriology, preventive medicine. I have been employed by the Food and Drug Administration since 1918. My duties are to examine all sorts of chemicals for very small amounts of impurities, and to determine [23] radioactivity in foods and drugs, and I have made hundreds of such determinations. I examined a bottle of Colusa Oil to determine whether there was any evidence of radio emanations or radioactivity but found none. After my examination, I sealed the bottle and sent it to Mr. Buell in San Francisco. The seal was then marked as Government's Exhibit No. 10 for identification.

The witness further testified on cross examination:

We have one of the most sensitive machines or instruments for the determination of radioactivity, the Geiger-Mueller Counter. The sample is placed nearby, and as the radium or the emanations from the radium are given out through a package, these rays penetrate and are thrown out. The nearest I can explain in a lay manner is to compare it with handfuls of atoms thrown out into the open, and as these atoms strike this counter, they are recorded on a volt meter, or the position at which the needle on the volt meter stands for every fifteen seconds. Yes, that method of testing is essentially an electrical process.



(Testimony of Dr. Anna E. Mix.)

On re-direct examination, the witness further testified that the test applied was the recognized Government test, and is the more sensitive test.

On re-cross examination, the witness further testified:

Radio emanations is a decay of radium. The radium lasts but it is giving off rays which travel at great speeds, and as these rays are given off, they are recorded on these delicate instruments. These are atoms and are electrical. Radium is atom-carrying; electricity is atom-carrying. The atom is a component part of a molecule; the atom has a nucleus and around that are groups of ions.

Those radium emanations are magnified by a great force of direct current in the machine we use, and that is then recorded on the volt meter; we take a weak emanation and build it up so it will affect the volt meter. [24]

“Mr. Gleason: Q. Are there any other minerals, any other substances, in nature that emit radium emanations? A. No.

Q. None whatsoever? A. No.

Q. Simply and only pure radium?

A. Well, no, not pure radium; radium in ore, radium in the form of carnotite, radium in the form of uranium—so long as your radium is there, it will emit your decayed products.

Q. And that occurs in many different types of ores, rocks, does it not? A. That is right.

Q. It comes from the ground?

(Testimony of Dr. Anna E. Mix.)

A. Well, yes, it comes from the grounds.”

“Mr. Zirpoli: Q. These emanations that you get from these ores that you just spoke about were not present in this oil, were they?”

A. No, sir.”

---

### MARY SMITH

was then called as a witness by the Government and testified as follows:

I am an associate in bacteriology at the University of California Medical School; in 1938 I received my A. B. degree from Mount Holyoke College. I then had two years of research at Columbia University in the field of bacteriology and endocrinology; after that I had a year of graduate work at Harvard Medical School in bacteriology. At the University of California I have been working on germicides and disinfectants; I am employed at the University as a bacteriologist. I examined an oil known as Colusa Oil. The bottle was then admitted in evidence as Government Exhibit No. 11. I made tests of the oil to determine its germicidal, antiseptic and inhibitory properties, making about forty altogether. I did not find any germicidal, antiseptic or any inhibitory properties.

On cross examination the witness testified:

I was testing the product to see if it would kill germs; I did not submit it to any clinical tests, only laboratory tests, [25] the standard tests used by

(Testimony of Mary Smith.)

the Food and Drug Administration of materials claimed to be antiseptic or germicidal. In one of the tests we would take a twenty-four hour culture of an organism, specifically staphylococcus aureus. (Here the witness described in detail the method of preparing this culture). We take a drop of the material to be tested and place it on the plate. If the material shows any germicidal or antiseptic properties, there will be a small or large clear ring around the material where the organisms have not grown. The plate is cloudy where the organisms have grown. You can see the individual colonies. With this material there was no clearing at all. The organisms could be seen growing, both in the material, the oil, and underneath it. Yes, the culture is the equivalent of the germ and we attempt to inhibit its growth or kill the growth. There are innumerable types of cultures; they could be counted in the millions. Out of these we used only two different organisms; they have been established as the best organisms through many years: one staphylococcus aureus, because it is an organism that has a standard resistance as determined by standard tests of resistance to phenol. Yes, there are many organisms that are more resistant to germicidal action.

I know nothing about psoriasis, having never studied the nature of it. No, I am not a pharmaceutical chemist, but I have tested disinfectants as a bacteriologist. No, I have not, as a pharmacist,

(Testimony of Mary Smith.)

studied pharmaceutical chemistry for the purpose of studying the germ-killing properties of a chemical. An antiseptic is considered to be an agent which will prevent the growth of organisms. Inhibitory means either to slow down or completely prevent, completely stop the growth of organisms. Germicidal means the power of the agent to kill the germs.

“Q. See if I understand your definition. If I had an organism, a bad case of psoriasis, and placed a preparation on my [26] hand which had the effect of stopping the growth of that and removing it, would that be antiseptic?

A. Yes; if it removed it, it killed the organism, it also would be germicidal.

Q. Now, the phrase or word ‘inhibitory.’

A. Yes.

Q. What do you mean by that?

A. ‘Inhibitory’ would mean here either to slow down or completely prevent, completely stop the growth of organisms.

Q. That is, the spreading of the growth and the multiplication——

A. The organisms might be living, but they would be——

Q. Held in check?

A. That is right.

Q. By ‘germicidal’, of course, you mean the power of the agent in question to kill the germs?

A. That is right.

(Testimony of Mary Smith.)

Mr. Gleason: That is all."

The witness further testified on re-direct examination:

The staphylococcus aureus is the ordinary, common pus-forming organism. We made several tests. Some of the tests are more to test the germicidal action and others are to test inhibitory action. They were all negative. As a result of these tests, I found they had none of the three properties previously mentioned.

---

NICHOLAS C. LEONE

was then called as a witness by the Government and testified as follows:

I am an inspector for the Food and Drug Administration. I hold a Ph.D. degree from the University of California and a Certified Public Health Officer from Harvard University. I have had occasion to make tests of various products to determine their germicidal activities. I participated in the tests with Miss Smith, a previous witness. I found that this Colusa Oil has no germicidal properties nor did it have any antiseptic or inhibitory properties.

On cross examination, the witness further testified:

My tests were the same that Miss Smith made; I collaborated with her. The tests we made were

(Testimony of Nicholas C. Leone.)

to determine if this product would kill germs. We used two organisms. [27]

On re-direct examination, the witness further testified:

The two organisms were the common pus germ and the typhoid organism.

“Mr. Zirpoli: Q. Why did you take these two?

A. Because both of those organisms are the standard or official organisms used in germicidal and antiseptic tests.

“Mr. Zirpoli: That is all.

“Mr. Doyle: Q. That is to say, by the Public Health Bureau; they are the germs that the Public Health Bureau uses in tests.

A. Yes, they are.

“Mr. Zirpoli: Q. From your general knowledge, including your university training and background, are these not the germs that are used for those tests?

“Mr. Doyle: I object to that; there is no foundation laid; he may have had a college education and not know much about what germs other people use.

“Mr. Zirpoli: I am asking from his background and experience in connection with his training and his statements. I will strike the question.

Q. From your experience and your training and your knowledge in your profession, in your opinion is the test that you applied a usual, standard test applied by the profession generally?

(Testimony of Nicholas C. Leone.)

A. It is.

“Mr. Doyle: Just a second, Mr. Witness, if you please, no proper foundation laid.

“The Court: Read the question, Mr. Reporter.  
(Question read.)

“The Court: He may answer. The objection will be overruled.

“Mr. Doyle: If your Honor please, we don't want to be contentious. We think there has been no testimony from this witness as to any training in school or otherwise to determine in the matter of testing germicide. [28]

“Mr. Zirpoli: He told us that he is a graduate of the University of California.

“Mr. Doyle: I might, be, too.

“Mr. Zirpoli: Q. What was your training? What degrees? What studies did you have?

A. I graduated from the University of California College of Pharmacy. Considerable work was in the field of pharmacy and bacteriology. I took two years—two and one-half—postgraduate work at the University of California to major in bacteriology.

Q. How many tests have you made to determine germicidal activities?

A. In excess of a hundred.

Q. From your experience and your knowledge and your training in your profession, in your opinion, were the tests made by you the usual standard tests made by the profession of bacteriologists?

(Testimony of Nicholas C. Leone.)

A. Yes, they are.

“Mr. Doyle: Just a second. Object to that question upon the ground there is still no foundation laid. He testified to what he did when he was at California, but this question calls for an answer from the witness as to what they do in New York and Philadelphia in all sorts of institutions other than the particular school he was in here and other than the particular outfit he now works with. We submit there is no foundation laid; it is just guesswork on the part of the witness.

“Mr. Zirpoli: He testified to the general consensus of opinion.

“Mr. Doyle: It isn't even shown that he knows.

“Mr. Zirpoli: From his knowledge.

“Mr. Doyle: From his knowledge, which is assuming something.

“Mr. Zirpoli: Do you want me to go into every book that he studied, every course he took, every test that he ever made?

“Mr. Doyle: I am not particularly concerned what counsel goes into or doesn't go into. I submit there is no foundation [29] laid for this witness giving this testimony.

“The Court: The objection will be overruled.

A. Yes, it is a standard test.

“Mr. Doyle: Exception.

“Mr. Acton: Exception before the witness answered.

“The Court: Note an exception for the purpose of the record.



(Testimony of Nicholas C. Leone.)

“Mr. Zirpoli: That is all.

“Recross Examination

“Mr. Gleason: Q. One other question. Are these the tests that are used to determine whether or not a given drug will destroy or inhibit the elements that cause skin diseases?

“Mr. Zirpoli: The same objection; there has been no foundation as to what the elements that cause skin diseases are.

“Mr. Gleason: I submit, if your Honor please, that the witness is here testifying in connection with psoriasis, acne and the various items mentioned in this indictment or this information.

“Mr. Zirpoli: I beg to differ with counsel.

“Mr. Gleason: The purpose of this testimony is to show that this particular product does not have any efficacious use in the treatment of those diseases. That is the issue in this case. As a matter of fact, those diseases do not involve germs. This is a test for typhoid. We want to see if this witness will testify as a scientist—and I believe he will not—that those are the tests—he has had this long training and this long background. We want to see if he will testify that those are the tests used by scientists to determine the antiseptic, inhibitory or killing powers with respect to skin diseases.

“Mr. Zirpoli: We haven't had any evidence in this trial yet as to what skin diseases. The Government has the witnesses, and will submit them, on that particular subject. The issue in so far as

(Testimony of Nicholas C. Leone.)

this witness is concerned is not with relation to those [30] diseases. There is a claim that it is germicidal, and he is testifying solely as to whether or not it will kill germs.

“Mr. Doyle: Typhoid germs.

“Mr. Zirpoli: Typhoid and the common pus germ that he has testified about.

“Mr. Doyle: That is all.

“Mr. Zirpoli: Yes, I agree that that is all he testified about.

“Mr. Gleason: Any further questions?

“Mr. Zirpoli: No.”

---

### DR. MAURICE K. TAINTER

was then called as a witness by the Government and testified as follows:

I am a professor of pharmacology at Stanford Medical School and College of Physicians and Surgeons Dental School; pharmacology is the subject dealing with drugs and medicines and their application to the treatment or cure of disease; it can be expanded to include research, investigation of drugs, development of new drugs, the study of toxic effect of them, the treatment of poisoning and various related subjects of that sort. A pharmacist is the man who prepares the drugs to be handed out to the patient. The pharmacologist is the man who, in the medical school or in research laboratories,

(Testimony of Dr. Maurice K. Tainter.)

develops those drugs and learns how they should be used and what their actions are. I am a physician and surgeon. I graduated from Stanford University Medical School in 1925. I am a member of all local, national and international societies relating to my profession. I have published a great many articles dealing with the new drugs and their uses, both here and abroad. I am familiar with petroleum oils as a pharmacologist; that is one of the compounds concerning which I teach medical students and doctors the proper use of drugs. I examined a sample of Colusa Oil. This is the sample. (This was then admitted in evidence as Government Exhibit No. 13.) The tests are quite simple to make. [31] It is not an astringent. I found no iodine—at least not within the limits of the sensitivity of the tests employed. I made a test to determine whether it had a radioactivity and found it had absolutely no radioactivity. I also found instead of being detergent and cleansing, it was a rather dirtifying material, a thing which would make you dirty and difficult to clean.

I rubbed some on my own skin and found no evidence that it was irritating, or produced any hyperemia or reddening of the skin. I found no camphor or menthol or other volatile oils in the material as judged by the test of smelling. I could smell no turpentine. We found no evidence of any kind of radioactivity, including radio emanations. This test is made by using what is known as a Gei-

(Testimony of Dr. Maurice K. Tainter.)

ger Counter, an apparatus which is about like the loud-speaker of a radio set, with a tube through which radium emanations come. This is a very sensitive apparatus. Then to see how sensitive the apparatus was, and to prove it was working properly, we took an ordinary wristwatch with a luminous dial, and when I held that an inch or two from the apparatus it made such a terrific noise, the static almost drove me out of the room. So I had to back off a ways. When I held it a distance of four inches from the apparatus, it gave out a noise of about three or four times the base noise of the cosmic rays. So this material, therefore, does not even have the small fraction of radioactivity that is present in the luminous dial of a wristwatch.

“Mr. Zirpoli: Q. Is there any additional value in wearing a wristwatch with a luminous dial, in your opinion as a medical man and pharmacologist, as a man who applies medicines and oils to the skin and to the person?”

“Mr. Gleason: We object to that, if the court please, on the ground that it is incompetent, irrelevant and immaterial, no proper foundation laid.

“The Court: I have allowed wide latitude on this testimony. [32] He may answer. Objection overruled.

“Mr. Doyle: Exception.

“A. No. Wearing a wristwatch which has a luminous dial does not give rise to enough radium emanations to have any therapeutic value.

(Testimony of Dr. Maurice K. Tainter.)

“Mr. Zirpoli: Q. Doctor, from your examination of this product, was it any different, from your own experience, from ordinary crude petroleum oil?

“Mr. Gleason: Just a moment. If the court please, we object to that on the ground that it is incompetent, irrelevant and immaterial; that no proper foundation has been laid. And we stress this objection, if the court please, for the reason, as has already been brought out, there are thousands of different types of crude oils with thousands of different constituents, and for a blanket assertion to be made of this type is utterly unfair. If the court please, we submit this: If the doctor wants to testify as to the crude oils that he has had experience with, he should give us the formulas and the designations, paraffine, asphalt or otherwise, and then compare this oil with them. Then we have some facts.

“The Court: The court is prepared to rule. If the witness knows he may answer. The objection may be overruled.

“Mr. Acton: Will your Honor allow us an exception before the answer?

“The Court: Note an exception.

“A. Well, because there are many varieties of oils, the material was different, of course, from a considerable number of them. However, it had no distinctive properties in the sense that it smelled like ichthyol or materials which you would recog-

(Testimony of Dr. Maurice K. Tainter.)

nize as having medicinal power, so that as far as I could make out, it was the commonest kind of crude oil in the sense that it had no special properties that were distinctive or characteristic." [33]

This oil had no alkalizing action nor is it an acid. It is neutral; it is in between the two. I have read Government Exhibit No. 7 in evidence; also Exhibit No. 8. This oil has no healing qualities. The oil in the capsules would not be an effective or useful treatment for eczema or acne.

This oil taken internally or applied externally would not be efficacious in the treatment of psoriasis; applied externally, or taken internally, it would not be efficacious in the treatment of athlete's foot, nor efficacious in poison ivy attacks or in the treatment of varicose ulcers. It would be undesirable for burns and should not be used on cuts; it would not act as a skin stimulant nor would it increase the circulation of the blood. The oil is not a detergent and I found no antiseptic ingredient. It might protect the skin against wind and chapping but it would not restore the skin surface.

The statement that "the emanation is taken up in the blood and as quick as lightning, goes to all parts of the body where it kills or checks the disease germs" is not true. Any amount of radiation which would be sufficient to kill disease germs will be enough to kill the body. The tissues of the body are more sensitive to radiation than are the germs.

Speaking in very general terms, there are two

(Testimony of Dr. Maurice K. Tainter.)

groups of sulphonated preparations of oils, solutions, one of which are the naturally occurring sulphonated preparations which we have known for hundreds of years, ichthyol, which contains organic sulphur, and they smell kind of like fish—decomposed fish—and those have been used as medicinal products for a long while. Then recently, within the last twenty years, there have been derived sulphonated products by chemical reactions. A good example of that is the irium in Pepsodent toothpaste and Drene and Duz that are being urged to use in your kitchen and dishwashing or as shampoos. Those are sulphonated compounds made by chemical [34] reaction. Those are the two general types: one the natural and the other the synthetic.

The salve or ointment would not be a competent or good treatment for hemorrhoids. It might be palliative in relieving itching; it might help the itching temporarily, but would not cure the condition. The benzocaine would relieve the itching.

“Mr. Zirpoli: Q. In this product we have .91 per cent of benzocaine, less than one per cent. Is there enough benzocaine there to be efficacious in the treatment of hemorrhoids, in your opinion?”

“Mr. Doyle: If your Honor, please, we object to the question upon the ground that it has been asked and answered. The previous answers given by this witness were upon the basis of this formula given to him by counsel. He has testified that he

(Testimony of Dr. Maurice K. Tainter.)

thought it would be beneficial and this is obviously an attempt, conscious or unconscious, to impeach his own witness.

“The Court: Objection overruled. He may answer.

“Mr. Acton: May we note an exception before the witness answers?”

“The Court: Note an exception.

“A. .9 of one per cent is not enough benzocaine for a good anesthetic action. It takes about ten per cent of benzocaine to produce a good degree of anesthesia, and one per cent, or .9 of one per cent, which is slightly less, is down to almost the minimum of effective concentration. I would say that the action at that concentration would be very small, but still might be present to a moderate degree.”

Thereupon the court adjourned until the following day, June 24, 1942.

Acne is a skin disease caused by bacterial infection of the skin. This oil would have no action on this infectious process going on below the surface of the skin. [35]

Poison Ivy is a burning of the skin by means of an oil secreted by the poison ivy or poison oak plants. The oil gets on the skin from contact with the plants out in nature, in the fields or in the woods, and then produces itching and burning and blistering, depending on the degree of the contact that occurs.



(Testimony of Dr. Maurice K. Tainter.)

“Mr. Zirpoli: What is the effect of the application of oil such as the oil here on the skin?”

“Mr. Gleason: We object, if the court please, that no foundation has been laid. We would like to have the doctor state whether or not he ever applied the oil to such a condition. Have you ever applied that oil to a condition of poison oak?”

“Mr. Zirpoli: I can cite innumerable cases under the Federal Food and Drug Act, your Honor, which provide that when a man who is a scientist particularly learned in a particular field takes the stand, he is competent to testify about those matters for which he is specifically trained by reason of his learning and his instruction and his scientific training; and furthermore, there are innumerable cases that say that the particular doctor need not even have applied the particular product involved or have used or seen it if he knows its constituent, component parts and has been given the necessary foundation therefor. And that has been done, because we have told the doctor what this stuff consists of, and the doctor himself has seen it, and from his scientific medical knowledge he can give his opinion as to what the effect would be.

“Mr. Gleason: If the Court please, we doubt very seriously whether counsel can produce any case covering testimony of this type. We would like to ask one question, if we may, for foundational purposes, and that question will be whether or not the

(Testimony of Dr. Maurice K. Tainter.)

doctor has ever applied oil of this type to that kind of a disease.

“The Court: The Court is prepared to rule.

“Mr. Zirpoli: That is cross examination. [36]

“The Court: The Court is prepared to rule. You may develop that on cross examination. The objection will be overruled.

“Mr. Acton: Will your Honor allow us an exception?”

“The Court: Yes.”

I have applied oils to poison oak. This oil would have no curative effect at all. It would have solely the action, the palliative action of gaining time, allowing you to stall, if you want, until after the condition had cured itself. It is not a cure for poison ivy or poison oak.

Acne is very commonly found in people whose skin is very greasy or oily, but I don't know whether you would say it is an oily disease. Get the oil and grease off, and you can get better application of your other remedies.

“Mr. Zirpoli: Isn't that true also of poison ivy?”

“Mr. Gleason: We object, if the Court please, on the ground that the question is obviously leading.

“The Court: Objection overruled.

“Mr. Acton: Note an exception.”

The treatment for poison ivy—the first treatment is to wash the skin with the strongest soap you can get. It removes all the fat and grease from the

(Testimony of Dr. Maurice K. Tainter.)

skin, so the first therapy you apply is to degrease the skin rather than oil or grease it up with some extraneous material.

Yes, Ichthyol is a derivative of crude oils coming from certain special deposits in various parts of the world. Ichthyol as used medically is not crude oil out of the ground. It has to be purified and concentrated. Sulphuric acid is used for the purpose of purifying it. No, the chemical process is not for the purpose of sulphonating the oil. The oil is already sulphonated before, but it is for the purpose of purifying it, freeing it from some of the other materials that may be with it.

“A. Sulphonation involves the combination of sulphur in a [37] special organic form—special chemical combination. It differs from the formation of sulphides, which have the smell of rotten eggs. Sulphonation is a combination of sulphur with oxygen and usually with organic material derived from the breakdown of animal matter. In ichthyol it is presumed by the geologists—I am not an expert in geology, but I know this as a matter of general knowledge—that they think the sulphonation of this oil comes from the oil coming from the bodies of fish and other animals of that sort which have been deposited in the strata from which this oil arises.”

Thereupon, the witness testified on cross examination:

No, I have never practiced dermatology. Derma-

(Testimony of Dr. Maurice K. Tainter.)

tology is the treatment of diseases of the skin, including psoriasis, eezema, acne, athlete's foot and the other diseases mentioned in the information. I have not attempted to apply this oil in any clinical tests. I made one animal test. I used a rabbit and dropped it in its eye to see if the material is irritating, that is, if it causes redness or burning and swelling of the eye. I dropped this in the eye of four rabbits and observed their eyes for six or seven hours during the day, and again the next day. By comparing the eye with that Colusa Oil in it on one side, and the other eye which had no oil, I find no evidence that this material produced any irritation of the delicate membranes of the eye, and therefore concluded that it has no irritating properties. I also rubbed it on my own skin and saw no evidence of irritation.

My opinion is that if you placed this oil upon the skin and it did not cause a reddening, then it was not an irritant or stimulant. Yes, I have used ichthyol and it only causes redness in a very mild degree. The redness produced is more the result of rubbing the skin than the ichthyol itself. Yes, ichthyol has been used for over a century as a theurapeutic agent, but it was dropped from the Pharmacopoeia because it had been decided that the [38] compound was without value. It had been found, as a result of more modern knowledge, the material was not useful or valuable enough to even

(Testimony of Dr. Maurice K. Tainter.)

employ a legal standard for its purity and strength.

No, I have never treated a case of psoriasis.

“Mr. Gleason: Q. That is one of the most difficult skin diseases known to the medical profession, is it not?”

A. I am not qualified as a dermatologist, so I couldn't answer.

Q. Do you know of any cure, as a pharmacologist, which the medical profession has developed for psoriasis?

A. Well, I know as a pharmacologist teaching the action of drugs to medical men that I have no drug that I teach them as a cure for psoriasis.”

Yes, I believe it is true that the known treatments of the medical world for psoriasis are external. I wouldn't like to set up myself as a dermatologist, because I obviously am not one, but as far as I know, all the treatment of psoriasis is the external application of remedies.

Yes, it is true that the function of the medical profession in the treatment of disease consists of the effort to cure the disease and the effort to mitigate it or alleviate it.

I have never personally treated a case of acne or eczema. I am not qualified to answer concerning various forms of eczema. I don't think anyone knows the cause of acne other than it is an infection of the skin and ultimately the skin is apt to get into a greasy state; that does not mean acne is

(Testimony of Dr. Maurice K. Tainter.)

not found in a dry skin. There are many diseases for which we do not have the real remedy because we do not know the real causative agent. Yes, the medical profession has a great many diseases as to which it does not know the true cause.

A proprietary medicine is one in which there is a property right, where some individual or firm owns that particular medicine. An example is adrenalin; one company owns the right to the name of adrenalin, whereas the drug itself is an official drug which is [39] recognized by the legal name of epinephrin. Any manufacturer can make and sell epinephrin, but Parke-Davis & Company have protection to the name of adrenalin.

I do not know the cause of psoriasis. Acne is caused by germs getting into the skin; ordinarily the germ you will find is a staphylococcus. Constipation does not cause acne, but if a person were rendered unhealthy by constipation he may get acne or indigestion, or any one of a hundred other things. Acne is caused by a germ—any number of germs can cause acne.

No, I would not expect ordinary crude oil to alleviate such a disease as psoriasis, nor acne, nor eczema; any such oil to have effect would have to have medicinal properties I failed to find in Colusa Natural Oil. I made no effort to test this oil in clinical tests other than what I have told you.

A radium emanation is a particle of energy given

(Testimony of Dr. Maurice K. Tainter.)

off from a radioactive material, in the form of alpha, beta or gamma rays. It is a ray—not a gas. Gases may be radioactive, but radium emanation is not necessarily a gas. The Geiger Counter tests radium emanations; I can't tell you much about it; I can play my radio and I can run a Geiger Counter.

“Q. You mentioned yesterday that cosmic rays cause this machine to record impulses that are translated and amplified into sound waves.

A. Into sound; that is correct.

Q. And that you put a wristwatch with a so-called radium dial on it——

A. A luminescent dial, yes. An ordinary wristwatch, the kind that you buy to see in the dark with.

Q. When you put this wristwatch in the immediate vicinity of this mechanism, if I recall your testimony, the noise produced was almost deafening; is that right?

A. Yes, there are enough radium emanations or radioactive emanations given off by even the luminous dial of a wristwatch to make so much noise that it was unpleasant to be in the room with it when this was put right up [40] against the counter in the position where the Colusa Oil was placed.

Q. Do you know the composition of that luminous dial?

A. I have never had occasion to study it. I know

(Testimony of Dr. Maurice K. Tainter.)

it is radioactive. This machine proves it is radioactive. It gives off an emanation that you can see in the dark."

I am not a radiologist, nor do I use radium therapy any more than I treat skin diseases.

No, I have not experimented with rocks or natural minerals that have radioactivity. Radioactivity is the liberation of energy, or the sending out of energy from radioactive materials.

"Q. And your statement is that a radio wave, what we term as the radioactivity, is material, is substance?

A. That is material and substance, because it can actually produce impacts. It has pressure; it can be deviated or swung from side to side by running it through an electrical field with magnets. That is what they do in x-ray tubes.

Q. In short, it is a material substance?

A. It is a material substance, although there you are getting down to a tricky field of physics and chemistry. The physicists themselves cannot agree as to what is immaterial and what is material."

A hemorrhoid is a distended vein occurring around the rectum; like a varicose vein in which the walls are weakened so it is enlarged and bulges out and gives rise to discomfort. Some people are born with poorer walls in the blood vessels, so they are subject to heart attacks, apoplexy and strokes, as we say, because they just naturally have blood



(Testimony of Maurice K. Tainter.)

vessel walls which get weak easily and give out, just like other people have flat feet. Constipation does not cause hemorrhoids, but if a person has a weak vein wall and is constipated, that might conduce to the condition of those poor veins. Hemorrhoids are not the expression of internal diseases. [41]

---

DR. JAMES W. MORGAN

was then called as a witness on behalf of the Government, and testified as follows:

I am a surgeon of the rectum and colon and a specialist in that field; I am a graduate of the University of Pennsylvania, 1914; I did my interne work at Philadelphia General Hospital; I practiced fourteen years in Modesto. I did postgraduate work in New York for six months in 1930, and in London for a year in 1931. I am a member of several medical societies, including the American Proctologic Society, which is made up of reputable rectal specialists; that is the field in which I specialize. I have written articles for medical journals. My work consists in part of treatments of hemorrhoids of which there are two types, internal and external. Internal hemorrhoids in 99% of cases are due to a family weakness, while external are due to injuries, hard stools, injuries from childbirth or the use of too strong medicines or bruises. A hemorrhoid is a tumor; it contains not only a vein, but also an ar-

(Testimony of Dr. James W. Morgan.)

tery and nerves. In treating externally, soap and water is best to keep them clean; if too large, they must be removed by surgery; we treat them with palliative measures to alleviate pain and discomfort.

If camphor and menthol are used in treatment, you would have to have six to ten per cent; I would want ten per cent—at least five per cent of benzocaine; you would get no benefit with less than five. An ointment made with lanolin and beeswax containing 25.93% zinc oxide, .91 of 1 per cent of benzocaine, less than five per cent menthol and camphor, together with unrefined petroleum oil would make them dirty and irritate them; it would certainly interfere with proper hygiene; soap and water is far and away better. Such an ointment would in my opinion irritate.

The witness testified further on cross examination as follows:

No, I have not seen the ointment. I have never used it in my practice or treatment of patients. I took his word those are [42] the ingredients and my answer was upon a hypothetical basis. It is true that different people react differently to the same quantity of the same drug. This is something we anticipate. As to many patients you must determine the quantity of the drug by ascertaining from the patient what the reaction is. I have had patients advise me that the drug prescribed was ineffective and that it gave no relief. When we have to change

(Testimony of Dr. James W. Morgan.)

the medicine, we usually do not hop up the dose; it is usually the other way around, except in the case of a sedative. We usually start from what is normal, but we have found that a normal dose is an over-dose for most people.

I do not recommend surgery in all rectal cases. I usually know the first time I see a patient if surgery is necessary. In other cases we try medical means rather than surgery; we try palliative measures. The most important thing is cleanliness, then the application of heat, application of anesthetic materials, rest, proper habits to avoid fatigue, and any general treatment that might be necessary. I do prescribe ointments and salves, but I am much against ointments. There are few that help as much as they interfere with proper hygiene, keep the air out and prevent proper air getting to the skin. I prefer a lotion which contains an anesthetic. Yes, the specialists in my field have varying views. The majority use more salves than I do. Most of the salves are wrong. I think one-third of all external hemorrhoids cause itching. In those cases where there is itching or burning, I prescribe medicinal preparations for application, containing an anesthetic; not always the same anesthetic; it varies. It depends upon the particular patient I am treating. However, I use the average dose and then modify it up or down.

Yes, it is true that an itching condition may be overcome or remedied by a counter irritant which

(Testimony of Dr. James W. Morgan.)

need not be an anesthetic; a counter irritant causes irritation, and that is what happens [43] when you use strong medicine around the rectum; the most delicate skin in the body is the perianal skin, and it will not stand a counter irritant that relieves itching the same as horse liniment does. I cannot think of any counter irritant that will do any good to the anus. You could use carbolic acid on a hemorrhoid and it would certainly take away the itching. We try to remove the cause of the itching, and you don't get that by counter irritants. Yes, it is true that we judge the effectiveness and efficacy of a medicine by its results upon the patient as we observe it.

The witness then testified further on re-direct examination:

I think this ointment from this jar would do more harm than good in the treatment of hemorrhoids; it might relieve temporarily some of the symptoms. Zinc oxide ointment as such is always irritating to the perianal skin and should never be used.

---

#### DR. HARRY JOHN TEMPLETON

was then called as a witness on behalf of the Government and testified as follows:

My office is in Oakland, California; my profession is dermatology and syphilology; a dermatologist

(Testimony of Dr. Harry John Templeton.)

is one who limits his practice to diseases of the skin. I am a graduate of the Ohio State University with a degree of Doctor of Medicine in 1917; University of Pennsylvania, Master of Science, 1926. I have specialized in this field for seventeen years. I am a member of a great many medical associations and have written a number of articles for scientific journals. In my work I treat such diseases as eczema, psoriasis, acne, ringworm, athlete's foot, poison oak, and in an emergency, burns.

Bearing in mind the chemical composition of this Colusa Natural Oil, I do not think it would be efficacious in the treatment of acne. For external medication you must have a minimum of three per cent sulphur, though I often use five to ten per cent, or stronger. I do think that a preparation which contains less than one per cent would not be efficacious. I do not think this [44] preparation known as Colusa Oil taken internally in capsules or applied externally would be efficacious in the treatment of acne, psoriasis, athlete's foot, ringworm, or eczema.

The application of an oily substance such as this oil would be harmful, I think, in the treatment of acne. I have had bad luck in treating acne with an oily substance; in fact, that is a condition known as oily acne produced by the external application of mineral oils. I think it would prove harmful in the treatment of poison oak. Again, we haven't had very good luck in treating poison oak by means of

(Testimony of Dr. Harry John Templeton.)

oily applications. I think it would prove harmful in the treatment of poison ivy. I don't think taking this oil in capsules would do any good in the treatment of the conditions outlined; nor do I think the oil applied externally and the taking of the pills internally in conjunction would prove efficacious.

The witness was then cross examined, and testified further, as follows:

I have never used this oil in my practice; I have made no clinical tests of the oil. Psoriasis is a very difficult disease and I know no cure for it.

---

DR. GEORGE V. KULCHAR

was then called as a witness on behalf of the Government, and testified as follows:

I am a physician specializing in dermatology and syphilology. I am a graduate of the Stanford University Medical School, in 1930. From 1930 to 1934, I served as instructor in the Medical School of the University of Pennsylvania, and specialized in dermatology and syphilology. Since 1934, I have been clinical instructor in these two subjects at Stanford.

Dermatology has to do with the diseases of the skin and its appendages. This has been my specialty since I left Stanford in 1930. I am a member of a number of medical associations. I engage in the

(Testimony of Dr. George V. Kulchar.)

practice of treating diseases of the skin. I am familiar [45] with eczema, psoriasis, acne, ringworm, athlete's foot and poison ivy. I treat bruises, but cuts only in an emergency. In the treatment of these diseases, I do not believe there is any medicinal value from the use of crude petroleum oil which has a sulphur content of less than one per cent; I would not use sulphur in some of the diseases you enumerated; sulphur could be used in the treatment of acne, psoriasis and eczema. To be effective, there must be at least five per cent sulphur in the compound.

Eczema comes in more than one form and the form of eczema would very definitely determine the character of the treatment or medication. You cannot have one specific medication that is good for treatment of eczema. The determination what should be used in the treatment of eczema depends upon a knowledge of the particular character of the eczema involved and that calls for a diagnosis by a skin specialist.

I am familiar with the composition of Colusa Natural Oil as recited by you. Bearing in mind its composition, as related by you, it is my opinion that the application of this oil would not be efficacious in the treatment of eczema; I think it would have a deleterious effect and an aggravating effect on acne; it would make it worse; it would not help in the treatment of poison ivy, or ringworm,

(Testimony of Dr. George V. Kulchar.)

or athlete's foot, or psoriasis. It would not be efficacious in the treatment of varicose ulcers. I do not think it would be helpful if taken internally in capsules, nor do I think the two taken in conjunction would be efficacious. In my opinion they would have no effect.

Oil is a satisfactory temporary treatment for a burn. I don't believe it would have any aggravating effect, and I don't think it would have any healing effect. This oil would not act as a stimulant on the skin, nor would it increase the circulation and aid in healing; it would not inhibit the spread of skin irritation nor restore normal skin surface. I use radium and radioactive materials. Radio emanations are not used in the treatment of skin diseases. Radio emanating materials are used to relieve itching, which they will do, and the other is to reduce skin lesions or reduce tumors by cell destruction, either the blood cells which collect under the skin or the actual tumor cells.

The statement "radium emanation is accepted as harmoniously in the body as is sunlight by the withering plant" is not true. [46] The statement, "the emanation is taken up in the blood and as quick as lightning goes to all parts of the body where it kills or checks the disease germs" is only partially true. If you are going to inject a radioactive element into the blood stream, it will be taken by the blood and will destroy cells, not germs; it



(Testimony of Dr. George V. Kulchar.)

will not kill germs. You have to inject radioactive material into the blood stream through a needle in the vein, not by rubbing oil on. Radium is subject to regulation and control; you must have the proper dosage applied in the proper manner; radium is an extremely dangerous element; it is stored in the bones; it destroys blood cells; it destroys certain vital glandular tissue; its improper use will lead to certain diseases of the blood which are fatal. The deposition of radium in the bone in the form of salts will lead to necrosis, by which I mean, the killing of the cells of the bone.

In my opinion, Colusa Oil would not act as a stimulant to the skin, nor would it increase circulation. Phenol would be a skin stimulant if used in small amounts, but if used in large amounts, it would destroy skin.

An unsulphonated petroleum oil is not a detergent for a skin condition. Crude mineral oil is not recognized by dermatologists as a proper treatment for a skin condition.

I have had occasion to observe the condition of external hemorrhoids and to treat the itching condition which accompanies that condition. The ingredients of the ointment here would have no value in alleviating the itching reaction from hemorrhoids; the benzocaine in the ointment is insufficient; the benzocaine is less than one per cent and we use from seven and one-half to fifteen per cent

(Testimony of Dr. George V. Kulchar.)

in an ointment; you have to use from one to two per cent menthol, and from two to four per cent camphor. This ointment would not act as a treatment.

One of the treatments for acne is the X-ray; acne occurs in an oily skin; a petroleum oil would have an aggravating effect. [47] Acne occurs as the result of a plugging of the oil gland; it occurs as a result of hereditary changes; an oily skin which is hereditary, and is also racial. The application of oil to this surface will lead to the plugging of oil glands and aggravate acne.

This Colusa Oil is not penetrating to the skin; it is impossible to penetrate the skin with ointments except into the hair follicles.

The witness then testified further on cross examination, as follows:

I have never used these products in treatment of patients. I do not recall Mrs. Gilbert L. Mead; it is quite possible I have treated her for psoriasis, but I don't recall it.

Here Mr. Gleason asked Mrs. Mead to stand up in the court room, and she did so.

“Mr. Zirpoli: That has nothing to do with his opinion as an expert and the testimony he has been giving with relation to these diseases. If you have that in mind and will make that clear——

“The Court: Keep in mind the limited testimony in chief.

(Testimony of Dr. George V. Kulchar.)

“Mr. Gleason: Yes, your Honor. I am trying to cross examine this expert, or so-called expert, on psoriasis, and I am going to use as the basis of my cross examination a patient of his by the name of Mead.

“The Witness: I do not wish to qualify as an expert on psoriasis.”

There is no other Dr. Kulchar in this locality who is a skin specialist other than myself.

---

DR. FREDERICK A. FENDER

was then called as a witness on behalf of the Government, and testified as follows:

I am a surgeon. I graduated from Harvard Medical School in 1929; I then was what is called a surgical house officer at the Brigham Hospital in Boston; that is the Harvard Teaching Service; later as resident surgeon, also at Boston for one year. That is [48] the Harvard Neurological Unit. My next work was assistant in surgery at the University of Rochester School of Medicine, and I was there two years. At present I am an instructor in Stanford Medical School, clinical instructor in surgery. I am also a practicing surgeon. I am not a member of any medical associations other than the usual county medical society, and the A. M. A. I have written articles which have been

(Testimony of Dr. Frederick A. Fender.)

published in medical publications. I have treated hemorrhoids, many cases, say from fifty to three hundred. I also have treated cuts and burns and varicose ulcers. Yes, I have been told about the composition of this Colusa Oil. In my opinion, it would not be efficacious in the treatment of varicose ulcers, nor would the taking of the oil in capsules prove efficacious in the treatment of varicose ulcers.

“Q. Would the two taken in conjunction prove efficacious?”

“A. I wish we could find any combination that would, of anything.”

In my opinion, this oil would not be good in the treatment of burns or of cuts. It would be hazardous to use it in cuts or bruises if the material had not been sterilized, and if not kept sterile, it might introduce contamination or infection.

I know very little about radium; the trouble with radium is that it kills tissue just as well as it does germs, so it has to be used with a good deal of restraint.

Regarding the ointment and its composition, it would not shorten the course of hemorrhoids, nor cure or improve them. If smeared on, it might make them less subject to friction. I don't think there is enough benzocaine in the ointment, nor would there be a value from 25.93 per cent zinc oxide; that is rather too small an amount.

The witness testified further on cross examination:

(Testimony of Dr. Frederick A. Fender.)

I have never used this oil in treatment of patients. I have never heard of Dr. J. B. Bissell, former director of the Bellevue Hospital in New York City, specialist in radium. I have [49] heard of Dr. Frederick Bliss, professor of medicine at Rush Medical College, but I don't know that he is an eminent specialist on radium. I have never heard of Llewellyn Jones Llewellyn, the head of the Royal Hospital at Bath, England.

Mr. Zirpoli then read into the record the contents of Government Exhibit No. 6. The Government thereupon rested.

---

Thereupon, the defendants called

**FRANK FAZIO**

as their first witness who, on direct examination, testified as follows:

I reside in Redwood City and am fifty-four years of age; I suffered from psoriasis for twenty-seven years; it is a skin trouble that even doctors don't know so far; it isn't contagious; not contagious, but they claim it is incurable. When this trouble came on my skin, I called on a doctor, and I had family doctors and skin specialists; they could do nothing for me; I was in Clarksburg, West Virginia, when this skin trouble appeared and the doctors there finally sent me to Battle Creek, Michigan; later I

(Testimony of Frank Fazio.)

went to the Ann Arbor Hospital, University of Michigan; then to Queens General Hospital in New York, a skin and cancer hospital; and besides I visited clinics. I treated with skin specialists in San Francisco and one in Redwood City, and then the University of California; I went to the University of California for a year between 1932 and 1934, and 1936 to 1938; I have been there right along. None of these doctors cured me. They tried to; they did lots, but I hate to say it, but I saw no results.

Mr. Gleason then offered a photograph which was marked Defendants' Exhibit A for identification.

My body was covered with this disease. I think the picture will tell; it is rough like scaly, rough lesions. I recognize Defendants' Exhibit A for identification as my picture; it is a picture of my back; it was taken in March of this year.

The photograph was then admitted in evidence and marked Defendants' Exhibit A. [50]

I have used Colusa Natural Oil since March of this year to cure this disease; it has helped me a lot.

Mr. Gleason then offered another photograph and asked that it be marked Defendants' Exhibit B for identification, and it was so marked by the Clerk.

I recognize this picture as that of my back; it was taken in April of this year; I had used Colusa Oil for three weeks when this picture was taken;

(Testimony of Frank Fazio.)

the scales and lesions that were on my back disappeared as a result of the use of this oil; this oil removed scales and lesions from other parts of my body besides my back; I had psoriasis on my back, the front part of my body, on my legs and arms; it covered most of my body; the use of this oil cured other parts of my body.

The photograph marked Exhibit B for identification was then admitted in evidence and marked Defendants' Exhibit B.

The witness was then cross examined and testified:

I came to California in 1932 from Clarksburg; my occupation was a barber, and I am still a barber. I went to the University of California clinic for a year starting 1932; I went from 1936 to 1938, but I have not been there since 1938; I treated with Dr. Deering in San Francisco, and Dr. Ames in Redwood City. I do not consider myself completely cured; I have only used the oil a short time; I am seventy-five per cent better.

---

DR. WILLIAM G. WOODMAN

was then called as a witness on behalf of the defendants and testified as follows:

I reside in North Hollywood where I am an osteopathic physician and surgeon; I am a graduate doctor; I am on the staff of the Los Angeles County

(Testimony of Dr. William G. Woodman.)

Hospital; I graduated in 1928 and have been in practice ever since; I have had experience with psoriasis. When I first got out of school, I tried to treat some cases using the Krause-Robin treatment, and did not get any results. That is the standard accepted treatment; I then stopped treating psoriasis [51] entirely; I am not a dermatologist; I don't go in for skin conditions; I refused to treat psoriasis, telling the patients to save their money.

I did, however, treat several psoriasis cases in 1940, using Colusa Natural Oil. I have records of five cases; I treated others, two neighbors over the back fence, you might say. One of the five cases referred to was extremely severe. David Matthew was the extremely severe case. Mr. Colgrove mentioned the oil to me and suggested I try it; this man was an old patient of mine and had to meet the public all the time. The psoriasis was on his face; he called and begged me to do something; we tried this oil on him and got some nice results; he cleared up; I treated him from April 1st to June 9th. He wasn't cured when I last saw him, but he had got much better and only had two or three small lesions when he moved away to his home in Texas. When I first started to treat him he had multiple lesions, probably three-fourths of his face was covered with psoriasis lesions, and on the shoulders. These lesions are a dry, crusty, brownish colored irritation on the skin.

I treated other psoriasis cases with Colusa Oil;



(Testimony of Dr. William G. Woodman.)

one attorney in the building had it on the shin and I gave him some oil and told him how to use it and it completely cured him. I saw him Monday and there were no lesions there at all. Pankey was another case who had it on the flexor surfaces of the arms and knees; that man didn't get completely well; he got better and the itching stopped, and the crustations would disappear; but he is a man who drank and that is contra-indicated in psoriasis.

I would not hesitate to recommend Colusa Natural Oil in the treatment of psoriasis; I don't know why it cures; it is just one of those things; they seem to get better; I have not treated a case with this oil where I got unfavorable results. I prescribed capsules for Mr. Matthew; there were no unfavorable results from [52] his using the capsules.

The witness then testified on cross examination as follows:

I am a graduate of the College of Osteopathic Physicians and Surgeons, Los Angeles; it is not an M.D. degree; it is D. C. physician and surgeon, unlimited license to practice, using any method; I am not a dermatologist and I am not a skin specialist. Psoriasis is essentially a skin disease. I don't make it a practice to treat skin conditions; I have treated some ten or twelve persons who had psoriasis, but I have records of five. Before coming into court I did not refresh my recollection by going over my records, I merely copied down these dates before I

(Testimony of Dr. William G. Woodman.)

left Los Angeles to come here; my records are in my office where they may be examined, and I have no objection to sending them up here; I understand according to law they should be kept in my office.

The witness further testified on re-direct examination:

Before coming here to testify, I was called on by a representative of the Federal Food and Drug Department. I can't name the man, but he suggested I not be present at this trial. I have telephoned Los Angeles to see if he left a card. This man who called on me did not tell me not to come to the trial, but he suggested that I be busy; those are the words he used. He asked me if I was going to testify, and he said to me, "Well, doctors can be made a fool of on the stand", and suggested that I be busy on that day. I don't know his name, but those are the words he used; I never met him before or since. I phoned Los Angeles for his card but I didn't keep his card; I didn't think I'd have any further use for it. I could identify him if I saw him; he weighed about 170 pounds, was about 5' 8" and gray hair; he had on a gray suit and his teeth were far apart in front; his card said "Inspector of the Bureau of Foods and Drugs" or something of that sort. He was in my office about five minutes; this man had a letter I had written to Mr. Colgrove, a testimonial. I do not know anything as [53] to the causes of psoriasis; the ideology is not known; by ideology I mean the cause.

## DONALD R. CRAWFORD

was then called as a witness on behalf of the defendants, and testified as follows:

I live in Los Angeles, and am a ticket seller for the Union Pacific Railroad in its depot ticket office; I have used Colusa Natural Oil for a skin ailment which was poison oak. This affliction dates back many years; each spring it would form small water blisters accompanied by a red rash, which rapidly spread to various parts of the body and would cause excessive weeping; there was severe itching and after the weeping had stopped, the skin would be very sore for quite a long period of time. It normally started with the hands, and on two occasions I have had it from my head to my feet. In 1940 I lost three weeks from work; I worked two weeks when my face was disfigured; this condition was accompanied by intense itching. I used this oil first in 1940; I went to a physician who treated me with a solution I had known as Santiseptic, for about three weeks, but it kept on spreading, as was the usual manner. I had heard of Colusa Natural Oil and thought I would try it. I was lying on the floor as I could not stand the bed clothes. I had saturated a turkish towel with the solution coming out of the blisters. I applied the oil at one o'clock in the morning, and at one-thirty that weeping stopped and you could practically see that thing heal. Inside of one week I was back on the job

(Testimony of Donald R. Crawford.)

with no more time lost. In 1941, I had a recurrence and immediately used this oil and had it quite well cleaned up in three days' time; the blisters were all dry, and I had been off work one day. Under the rules, I had to see the company physician who gave me three shots hypodermically on alternate days; it took six days to complete the shots; well, after the first shot, I got what is called a reaction which seemed [54] to cause more blisters, but upon the completion of the third shot, I really broke out into a mass of sores; it was just a very, very bad case, similar to what I had gone through the year before. I was, however, able to heal up that condition within a week to ten days' time with Colusa Oil; the oil gave me relief immediately from that agonizing itching; I was able to sleep.

I was visited on two occasions by agents of the Federal Food and Drug Department who came to see me about my testimonial; one of them said to me I might just as well use a crankcase oil.

In previous years I had tried countless remedies; none ever gave me the relief that Colusa Natural Oil gave me. No, I have no interest in this case.

On cross examination, the witness testified:

I did not try crankcase oil; he did not tell me not to come to court.

At this point, Mr. Zirpoli asked permission to recall Dr. Woodman to the stand, and, on resuming the stand, Dr. Woodman testified further as follows:

(Testimony of Donald R. Crawford.)

Some of those I treated with Colusa Oil, that was the only treatment; it was the only treatment for Butterworth, that was the case of the legs; it was the only treatment for Pankey, who was fifty miles from my office. I used a quartz light also in connection with treating Matthew; also a short wave to drive the heat in. I use the word "arrested" not "cure"; I can't say which did the work, except that these other modalities I had used before on psoriasis in years before.

Yes, the inspector I talked to was John P. Kathe; the only testimonial I had ever given was the letter I wrote Mr. Colgrove; I don't recall giving him more than one and didn't recall that one until Mr. Keefe brought it to my attention. I have never signed "M.D."; that is an error on the letter he showed me.

The letter was marked as Government's Exhibit No. 13 for [55] identification.

---

HENRY N. STABECK

was then called as a witness on behalf of defendants, and testified as follows:

I reside in Los Angeles; I am sixty-seven years of age; I was formerly an investment banker, but am now buying for the Housing Authority of Los Angeles; I had stomach trouble for four or five

(Testimony of Henry N. Stabeck.)

years prior to 1940 and trouble with one of my feet for four months prior to January, 1940; it was hard for me to digest my food; I was seldom hungry, and if I ate any greasy foods, I had severe pains.

“Q. And had you prior to January of 1940 used any drugs for that stomach trouble?”

“A. Yes, sir.”

I doctored with Herbert W. Jones of Minneapolis for two years, and my doctor there said I had ulceration of the stomach. I later moved to Los Angeles and had a recurrence of the trouble, and Dr. Westphal of Glendale told me I had a recurrence of stomach ulceration. In 1936 or 1937 I had another recurrence; in 1940 I met Mr. Colgrove and he said, “Why don’t you try Colusa Natural Oil.” I commenced taking the capsules; I first took two a day and later three a day. I was entirely relieved and haven’t had any recurrence.

I had an irritation and swelling on my left foot, diagnosed as athlete’s foot; I used Colusa Oil on that; the result was that it cleared up entirely and I have had no recurrence. It took six or seven days to clear up; it relieved the itching the first day.

The witness further testified on cross examination:

This stomach condition was first diagnosed in 1921; I suffered from time to time until the last recurrence in 1937; I was always careful of my

(Testimony of Henry N. Stabeck.)

diet, but I am not careful of it now. I was under the care of a physician in 1940; it took fifteen minutes to half an hour for the doctor to determine I had a recurrence of my stomach ulceration; he knew of my former trouble; I took X-ray [56] tests in 1921, but none since.

I applied the oil to my foot that had the swelling and irritation; I cleaned that foot every day and rubbed the oil on it both morning and night very diligently; I did that for six or seven days.

On redirect examination, he further testified:

Since I used Colusa Natural Oil, I have not adhered to this diet; I have not dieted at all since I was cured with this oil.

---

### MRS. JOSIE ALICE MEAD

was then called as a witness by the defendants, and testified as follows:

My husband is Dr. Gilbert L. Mead, a chiropractor in Oakland, California; I am a hairdresser. I formerly suffered from psoriasis for three years; I treated with different specialists, one for eight or ten months in San Francisco; he finally told me I worried him more than any other patient, that I was ruining his reputation; he tried X-ray, gave me quartz and various shots, gave me medicines and then he finally put methylene blue on my feet and painted those twice in two weeks, told me to

(Testimony of Mrs. Josie Alice Mead.)

use aromatic spirits of ammonia to remove that. My feet broke down and he said I didn't respond. My work is hard and the hours are long, and finally I had to wrap the sore parts with towels; I couldn't wear white stockings; at night I would have to change towels. I finally consulted another skin specialist. The first specialist I consulted was Dr. George V. Kulchar; he is the one who gave me the prescription that took the skin off; it was the same Dr. Kulchar who said yesterday that he couldn't remember me; I saw him in February of this year; previously I had been to his office from the 1st of June of last year. Dr. Kulchar told me mine was the most difficult case he had had. Dr. Kulchar never cured my condition; it would get better then mushroom worse than ever. This disease affected me all over; I suffered day and night; the itching [57] was terrible; it affected my feet, knees, elbows and the palms of my hands, accompanied by this scaly condition.

I eventually tried Colusa Natural Oil only four weeks ago. I took the capsules and the oil for this psoriasis condition and it began to soothe me, and in five days I was so relieved that I couldn't express my gratefulness. I am almost completely cured; I have no swelling; there are a few deep pits that when I dress them morning and night I see improvement. I am almost completely cured now.

Mr. Gleason then offered in evidence a bottle of



(Testimony of Mrs. Josie Alice Mead.)

ointment and the Court ordered the bottle marked for identification, and the Clerk marked it Defendants' Exhibit C for identification.

I received the prescription from Dr. Kulchar and took it to the drug store in the Medical Building and had it filled, and this is the bottle I received; it is numbered 248231, Dr. Kulchar; I used the ointment; it was the methylene blue that took my skin off; that was his last treatment before I quit taking treatments from him.

Thereupon the bottle was admitted in evidence and marked Defendants' Exhibit C.

There was no cross examination.

---

MRS. TERESA J. LOUGHRAN

was then called as a witness on behalf of the defendants, and testified as follows:

I am sixty-two years of age; I reside with my niece, Kathie M. Harliss; since 1906 I have suffered from varicose ulcers; I sustained an injury the morning of the big earthquake; when I would suffer an abrasion, it would cause an aggravated condition which would result in an abscessed condition; the last occurred three years ago; the ulcers extended from the ankle almost to the knee on both limbs. I went to bed on January 26, 1941, seventeen months ago; I stayed in bed for eleven months. This condition would clear up a little and then go

(Testimony of Mrs. Teresa J. Loughran.)

right back to the other—to [58] the other condition, and it was that way for eleven months until I started in to use your Colusa Oil. During the first part of this period that I was in bed, I had been under the care of a physician, Dr. Roget, but there was no charge and he stopped coming because he just told me to keep on using the medicine that I was using, because I had had a heart condition and I had to use the heart medicine for resting and getting the heart back to normal.

I then used Colusa Natural Oil; after being in bed eleven months, my limbs were in the same condition; my limbs were in a raw condition when I first used Colusa Natural Oil, but it felt sort of soothing; the next morning, I used it and could handle my limbs with less pain; after the third application, I could rub them; they were thoroughly cured in three weeks and I was able to get up. I am now up and around the house. My limbs are thoroughly cured.

The witness further testified on cross examination:

My heart is better; I have been taking digitalis right along, and I have had seventeen months of rest.

MRS. AGATHA DEVLIN HARLESS

was then called as a witness on behalf of defendants, and testified as follows:

I am a housewife; I formerly suffered from a skin ailment; I had a lingering case of eczema on my hands; it first broke out with a tiny rash, then it spread to my thumb and then it spread and spread until it affected both hands; I lost three fingernails. I consulted several doctors but they did not cure this disease. I had x-ray and ultra-violet ray treatments and various ointments and salves, and finally I tried Colusa Natural Oil. I started using this oil in August, 1941, at a time when both hands above the wrists were covered with eczema. After using Colusa Natural Oil for two weeks, I began to notice some difference and then very definitely they started to clear up; I used it every night for [59] quite a while, and then I finally was able to omit using it from time to time. I don't need to use it any more. I was treated by Dr. Miller and by Dr. George V. Kulchar.

The witness further testified on cross examination:

Yes, I had eczema. No, I do not know the cause of it.

## MRS. RENA GERLACH

was then called as a witness by the defendants, and testified as follows:

I reside in Berkeley; I am a housewife; I formerly suffered from a skin disease of some kind; I never really found out what it was, but some doctors said I was allergic, and others said it was a vegetable poison. This disease was all over my hands and went up to my arms, just running all the time; I had to keep my hands raised up, and because they were so sore I couldn't touch anything. My son had to feed me most of the time; my skin was running and itching; my hands would swell three times their normal size. I used every patent medicine on the market. I once got blood poisoning; Dr. Kendopp lanced my hands for fourteen days; I doctored with Dr. Fanning in Sacramento; he is a skin specialist. I used water and mud packs. I then resorted to Colusa Natural Oil in February of this year; in three weeks it cured my hands and arms all up. (Here the witness removed her gloves and exhibited her hands and arms to the jury.) I am proud of what it has done for me; it stopped the itching immediately. I suffered mentally in that I couldn't sleep; I couldn't feed myself; I couldn't wash my face. With two hands tied up you can't do anything.

On cross examination, the witness further testified:

Although these doctors treated my hands, I couldn't say what was wrong with them, because the doctors couldn't tell me what it was.

## HOWARD EVERETT

was then called as a witness on behalf of the defendants, and testified as follows:

I reside at 1332 South Hope Street, Los Angeles; I am past [60] seventy-two years of age; I hold a real estate broker's license; I was formerly in the banking business. I have suffered from hemorrhoids for probably thirty-five years or more; I have tried everything available through purchases at drug stores, besides consulting doctors and using various ointments and applications. I was formerly sales manager for Colusa Products Company, from April 13, 1941 to January 16, 1942. I had used this Colusa Natural Oil Ointment for the hemorrhoid condition for several months prior to my association with the company, and since I have left the company. This ointment gives greater relief than any product or treatment I ever had; it stops the itching and flow of blood and gives almost instant relief. It does assist in relieving the discomforting irritations of hemorrhoids.

“Mr. Gleason: Did you ever have any occasion, Mr. Everett, to observe personally the effect of Colusa Capsules—the use of Colusa Capsules—on any other person?

“Mr. Zirpoli: I want to interpose an objection, your Honor. While I recognize that it is proper for counsel to bring a witness into the courtroom who himself used it and can testify as to what the effect has been with relation to his personal use,

(Testimony of Howard Everett.)

he cannot call a lay witness to testify as to the effect of the use of a product of this nature on another person, particularly since he is not qualified. He cannot tell us, nor is he qualified to tell us, of the condition that the particular person may have been suffering from; nor is he qualified to tell us of the results or the beneficial effects.

“The Court: Just a moment. Be seated, gentlemen. The Court is prepared to rule. Read the question, Mr. Reporter.”

(Question read.)

“The Court: The objection will be sustained.

“Mr. Acton: Will your Honor allow us an exception to the last ruling? [61]

“The Court: Certainly.

“Mr. Gleason: I don't want to go contrary to the Court's ruling. I would like to make a statement of the purpose of the testimony and an offer of proof so that the Court will be acquainted with what—I can't go on questioning, of course, to cover the situation we were attempting to cover.

“The Court: There is nothing before the Court at the present time, gentlemen. You must proceed along the line——

“Mr. Gleason: Q. Did you have a friend, Mr. Evertt, who was suffering from ulcers?

“Mr. Zirpoli: Just a moment, your Honor.

“Mr. Gleason: Withdraw the question.

Q. Did you have a friend who used Colusa Natural Oil to your knowledge?      A. Yes, sir.

(Testimony of Howard Everett.)

Q. Did you see him prior to his use of the oil?

A. Yes, sir.

Q. Will you describe the physical condition of the man prior to his use of the oil?

“Mr. Zirpoli: What do you mean by ‘physical condition’? His appearance as the witness actually saw it?”

“Mr. Gleason: That is what we are limited to under your objection.

A. Why, he was ill.

“Mr. Zirpoli: Your Honor, that very statement is a conclusion; that he was ill calls for a conclusion; that is not a physical description. I ask that that be stricken from the record.

“The Court: It may go out.

“The Witness: He was thin, depressed.

“Mr. Zirpoli: I ask that the conclusion that he was depressed go out; that obviously is not a conclusion that a person can make.

“The Court: It may go out.

“Mr. Zirpoli: He was thin. [62]

“Mr. Gleason: That is all. Never mind that. That is all.”

On cross examination, the witness testified:

“Mr. Zirpoli: You don’t claim to be cured of your hemorrhoids now, do you?”

A. No sir, I do not.

“Mr. Gleason: There is no evidence in the case of any claim that this does cure him.”

## DR. W. T. S. VINCENT

was then called as a witness on behalf of the defendants, and testified as follows:

I am a doctor, a medical man; my office is in the Fannin Building, Houston, Texas; I have practiced medicine for fifty-two years; I am seventy-eight years of age; I received my medical training at the University of Cincinnati and graduated in 1889; I am an M.D. I have been a specialist all of my career, specializing in blood, genito-urinary and dermatology; by dermatology, I mean treatment of skin diseases; in the course of fifty-two years I have treated practically all skin diseases. Some of the skin diseases are known as eczemas, psoriasis, acne, varicose ulcers. There are a great many cases of skin diseases in Texas. I am licensed to practice medicine in five states. I have been continuously in Houston, Texas, for the past seventeen years. I have treated hemorrhoids. There are ten or twelve different types of eczema. Psoriasis is considered very difficult to cure; many have said it is incurable. I am today treating ten or twelve cases of varicose ulcers. A varicose ulcer usually comes from the rupture of an over-dilated vein, leaving a sore or ulcer. It is always indurated, meaning, dug out deep underneath.

There are two kinds of acne vulgaris; one is rosacea, which is just of the skin, and the other is acne vulgaris, which very often commonly arises from a comedone or blackhead and oily skin surface, and which is very stubborn and difficult to treat.



(Testimony of Dr. W. T. S. Vincent.)

I have used Colusa Natural Oil in the treatment of my patients, starting a little over three years ago; I have used it [63] hundreds of times. I have treated psoriasis with this oil; fifty or more cases would only approximate it. I have treated many cases of eczema; it would be difficult to approximate the number.

I remember Carl Alsbrook who was afflicted with psoriasis; this condition was all over his back, chest and legs, and one large spot on his cheek; it was a terrible condition; he was almost a solid scab on his back and chest. I examined him; when he removed his shirt, there was an absolute shower of scales which fell to the floor, shook out of his shirt and fell from his body, so much so that he turned to me and said, "You will have to have this place cleaned up when I get out of here." I treated him with Colusa Natural Oil for a number of months; he came in 1941 and I was all through with him early this year. I cured him absolutely with this oil. I had photographs taken of this man's body. No, I did not cause any pictures to be made when he first came to me for treatment. I wanted him to have pictures taken because it was a very, very exceptionally bad case, but he wouldn't go; he wouldn't go because he was ashamed to go, he said, and strip before the photographer.

The first photograph was marked Defendants' Exhibit D for identification.

The second photograph was marked Defendants' Exhibit E for identification.

(Testimony of Dr. W. T. S. Vincent.)

Exhibit D is a photograph which I caused to be taken of Mr. Alsobrook's back, and Exhibit E is a photograph of the front portion of his body. These pictures were taken about six weeks after his treatment with Colusa Natural Oil started. I had treated him continuously during that six weeks' period. These pictures truly depict the condition of the boy's body as I saw it at that time.

Thereupon, the photographs were admitted in evidence as Defendants' Exhibits D and E, respectively. [64]

These pictures do not show the condition of the boy's body when he first came to me for treatment. They were taken six weeks later when there had been quite an improvement. The improvement was wonderful from the beginning, because it was an almost impossible case to start with; there was a wonderful improvement in his case. I recently had occasion to examine him. Last month, he came to my office for the purpose of being examined according to Texas laws so that he could get married. I examined his body and he had no signs of the disease, not even scarified surface of the skin. He was completely cured with Colusa Oil.

I also remember the Dalkins case which was a case of psoriasis. Dalkins lived on the edge of Houston; he had spots on his skin and the itching was so terrible that he lay awake and scratched all night, and I think he scratched his face and got it into his face——

“Mr. Zirpoli: Your Honor, I am going to object

(Testimony of Dr. W. T. S. Vincent.)

to the doctor saying that he lay awake and scratched all night, and also to the doctor saying that he got it into his face. He wasn't there; he didn't sleep with him.

“The Court: Let the record stand. Proceed. Let's get through with this case.”

He was in such condition he was ashamed to come out in public very much. I used Colusa Natural Oil and gave him the capsules internally; he practically got rid of that trouble in six weeks, an amazingly short time to me. He was cured, and he was cured with Colusa Oil and capsules. I saw Mr. Dalkins several weeks ago. My treatments with this oil have been to a large extent successful, though there is no such thing as a cure-all. I never saw a case as bad as the Alsobrook case either before or since; it was the worst I had ever seen.

I treated quite a few cases of athlete's foot with this oil; also acne; also varicose ulcers. [65]

“Q. State in some detail the beneficial results that you observed that ensued from the use of these products.”

The first beneficial result is the palliative or quieting result. By this I mean, the stopping of the itching and pain. This is a very important part of what we doctors term treatment, because many patients suffer from the nervous condition which is consequent upon these diseases—that is, consequent upon the intense pain, loss of sleep and itching, and so forth, which accompanies these diseases. When you quiet these, you have gained a decisive

(Testimony of Dr. W. T. S. Vincent.)

point in the treatment. Yes, absolutely, Colusa Oil does mitigate the itching and pain incident to these diseases. I have noticed that it does this very generally, almost one hundred per cent; and it does this almost immediately. For instance, using it on the day that the treatment was given, the patients would sleep well that night and wake up refreshed and better.

With respect to the effect of the use of this oil on the skin lesions and the ulcerated condition of the skin that accompanies these diseases, I noticed that the scales would be softened by the penetrating action of the oil and they would almost immediately begin to exfoliate. The oil has a very fine penetrating effect into the skin. I also observed that following the relief of the itching and the alleviation of the skin lesions would come the actual healing. Yes, the oil accomplishes restoration of new skin. Yes, I observed this from my use of this oil in a large number of cases.

“Q. Doctor, what is your opinion, based on your experience and training as a medical man, and based upon the use that you have made of Colusa Natural Oil in the treatment of various ailments, as to the efficacy of that product in the treatment of psoriasis?”

“A. My firm conviction is that it is—that it is the best—I know it is the best treatment I have ever used.”

There are two distinct classes of physicians, the homeopath [66] and the allopath; the great differ-

(Testimony of Dr. W. T. S. Vincent.)

ence in the two schools lies in the dosage, in the amount that should be prescribed per dose.

I have found Colusa Natural Oil as efficacious in the treatment of eczema as I have in the treatment of psoriasis. It has a very fine effect on cases of eczema. There are, of course, many kinds of eczema; we find some are very dry, and some are so wet they are called "weeping" eczema. I have treated both types with this oil. I have also treated athlete's foot with this oil and find it stops the itching almost at once. Athlete's foot is very local; it isn't very hard to reach, and the result of the application of Colusa Natural Oil has been very speedy in athlete's foot.

I have treated varicose ulcers with this oil.

"A. The physician who goes after a case of varicose ulcers aims first to in a way purify the ulceration. It is a punched-out, depressed ulceration, and nine times out of ten when the patient first comes to the doctor and shows up that ulcer or number of ulcers, he sees a nasty, depressed place in the skin of different sizes, filled with pus, very smelly, if you will allow the word; they nearly all have an odor that is not liked by anyone. And the first thing the doctor goes after is to get rid of that pus and lay a foundation for healing—granulations, as we call them."

I have found Colusa Natural Oil to be efficacious in accomplishing this healing condition.

I have also used Colusa Ointment in the treat-

(Testimony of Dr. W. T. S. Vincent.)

ment of hemorrhoids and have found it very satisfactory as to itching and burning, the bearing down feeling that comes from distended hemorrhoids. I have used it on myself for that condition (pruritis) and have found that it stops the itching right away. Pruritis Ani means itching about the anal territory. The ointment is almost immediately remedial; I am not talking about the hemorrhoid proper—I refer to the itching. I don't claim it cures [67] hemorrhoids. In my opinion this ointment is efficacious in relieving the discomfort and irritations of hemorrhoids, and relieves itching and localized irritation in ninety per cent or more of cases. It is my opinion that Colusa Natural Oil is efficacious to relieve discomfort and pain incident to these skin diseases referred to in the information, and it will inhibit the spread of skin irritations and restore the normal skin surface. It is my further opinion that this oil acts on the surface of skin irritations as a stimulant and increases circulation and aids in healing.

The witness testified on cross examination as follows:

Before attending the University of Cincinnati, I took the preliminary work under my own father, and then took the two year course. I took no post-graduate work. I am now practicing in Houston, which is in Harris County; I am not a member of any medical society. I have not written articles for publication, having confined my practice to my own

(Testimony of Dr. W. T. S. Vincent.)

work. I am a specialist in blood, genital, urinary and dermatology. I operate a clinic in Houston under the name of "Wage Earners Clinic". It was previously known as "Dollar Medical Clinic". I have never operated a clinic in Dallas nor practiced there. I bought the clinic from a man named Burrows about seventeen years ago.

"Mr. Zirpoli: Q. What is homeopathy?

"A. It is a method of treating by infinitesimal doses as compared to the allopath. The doses are always very much smaller than allopath.

"Q. But it is more than the treatment by infinitesimal doses, isn't it? Doesn't it consist of a knowledge of the individual being treated, and his reaction to various drugs or chemicals?

"A. I presume so. Homeopathy is a school of medicine which is the same as allopathy, except one school believes in very small doses, compared to the allopathy using the larger doses; and they are [68] termed the regular school.

"Q. It is not the size of doses? Isn't homeopathy predicated on the law of similars?

"A. They are similar; they are used for similar things.

"Q. Is it predicated upon the fact that you determine what reaction a particular drug will have on a healthy person? A. No.

"Q. And the symptoms that will be produced thereby? A. No, sir.

"Q. Let me finish, please. A. Yes.

(Testimony of Dr. W. T. S. Vincent.)

“Q. Then, you administer the same drug to the sick individuals who had a group of symptoms to which the drug had produced in the healthy individuals?”

“A. Not necessarily. The allopath uses a lot of drugs the homeopath doesn’t.

“Q. Do you know whether they use the compounds or individuals?      A. Either way.

“Q. Do you know of Hahnemann?”

“A. He is supposed to be the founder of homeopathy.

“Q. Do I understand, then, that all there is to homeopathy as differed from allopathy is the size of doses that are administered?”

“Mr. Gleason: Just a minute. This is not proper cross examination. The witness testified the difference lies roughly in the size of the doses. Counsel won’t contend the allopaths don’t study the cases and study the effects.

“Mr. Zirpoli: That is an improper definition to say that the difference all depends upon the size of the doses.

“The Court: You may answer.

“A. Repeat the question.

“The Court: Read the question.

(Question read.)

“A. The homeopaths are known to use drugs that the allopaths don’t, and I am not acquainted with homeopathy. I have never paid any attention to it. I suppose you know that a good many of the [69] allopathic school look upon homeopathy as



(Testimony of Dr. W. T. S. Vincent.)

a joke. However, I never have held that view of it.

“Mr. Zirpoli: Q. You said the difference was in the size of doses. You don’t contend that is the whole difference?”

“A. Not altogether, because they treat cases in a manner different from allopathy.

“Q. I will read you a definition, and you tell me whether you consider this a proper definition of homeopathy: ‘A system of treatment of disease by the use of agents which, if administered in health, would produce symptoms similar to those for the relief of which they are given.’

“A. I don’t know whether it is or not. I have never studied anything about homeopathy.”

Psoriasis is not a condition that always comes and goes. I have treated many cases of psoriasis and I have never treated a case of psoriasis that comes and goes of its own accord. I have never prescribed this oil for internal use in treating athlete’s foot. I think every doctor makes additions at some time to this or that which in his judgment he sees necessary or fit in treatments. [70]

“Mr. Zirpoli: Did you ever use any other drug in the treatment of acne other than Colusa Oil?”

“A. I never found it necessary \* \* \* unless it was for constipation, or something of that kind.

“Q. Did you ever give any other treatment of any other kind while using the Colusa Oil for acne?”

“A. No, it was not necessary.”

I had no chemical analysis of Colusa Oil made.

(Testimony of Dr. W. T. S. Vincent.)

I saw a statement of its contents. It had ichthyol content; I knew this by its odor. I wouldn't use anything in the dark. I don't care if it came from Heaven. I looked it over and saw it was supposed to have ichthyol and I used it. I don't know what its component parts are. If a thing works all right I try it and if it doesn't, I discard it.

There are ten or twelve kinds of eczema and this Colusa Oil proved good for all kinds, including the weeping type. Its penetrating effects seem to do the work. I don't think the causes of eczema are known. I treated A. J. Guidry for *acne vulgaris*; for a while I had excellent results, but he had a return of it later on. As I remember, that young man was almost unfit to be seen on the street, when I first started to treat him; that was a year or more. I cleared up the *acne* at that time and he was able to go back to work. I treated him for several weeks; I think I gave him something for his stomach as his digestion was bad. Some cases require attention to diet, and some don't.

“Mr. Zirpoli: Q. Well, are we talking about *acne*, or eczema.

“A. Any of them, as far as that is concerned.

“Q. In the case of Guidry, you prescribed a diet, because you thought that condition was necessary to his treatment of *acne*? A. Yes.

“Q. What was the medication you prescribed?

“A. Nothing except cleansing.

“Q. What other treatment?

(Testimony of Dr. W. T. S. Vincent.)

“A. No other treatment. [71]

“Q. None, whatsoever? A. No.

“Q. You are positive?

“A. I don’t remember giving him any other treatment.”

Athlete’s foot is a disease of fungus growth. No, in my opinion, bacteria are not fungi. It was formerly hard to handle, but I haven’t had any trouble with it of late.

“Mr. Zirpoli: Q. In your opinion, Doctor, is bacteria fungi? A. No.

“Q. Have you made any study of fungi and the classifications of fungi?

“Mr. Gleason: I object to that as improper cross examination.

“The Court: Proceed.

“A. No, I have not gone into deep study of any of these things very much, because the school of experience is about all I needed, I thought; and I have been getting along very well with that.

“Mr. Zirpoli: Q. Do you know the two primary classifications of fungi?

“Mr. Gleason: Just a minute. We object to this as not proper cross examination.

“Mr. Zirpoli: Q. Well, let me ask it this way: Do you know how many classifications there are?

“A. No.

“Mr. Gleason: I object to that as immaterial.

“The Court: Proceed.

“Mr. Zirpoli: Q. Do you know of the schizomycetes classification? A. No.

(Testimony of Dr. W. T. S. Vincent.)

“Mr. Gleason: I object to that as immaterial.

“Mr. Zirpoli: Q. Do you know what the eumycetes fungi are? A. No.”

Sulphur is a very common drug and it is used in many types of application, not only that, but internally. As to the amount, [72] it depends on what I am using it on. It doesn't require very large doses, anywhere from a half to two or three per cent. I think I have prescribed a medication with a half of one per cent of sulphur in it for eczema, but I cannot give you any name for such preparation. I have my own drug room and follow my father's method of prescribing his own medication. I compound almost everything I use in my practice in my drug room. I haven't written a prescription for five years. There is too much of that. There are a thousand remedies that you could write prescriptions for that the doctor writing them doesn't know anything about at all; only from what he reads.

“Mr. Zirpoli: Q. You make up your own compounds and do that in your own room; and am I to understand you never made a test of this oil to determine whether ichthyol is present?

“A. You are going into chemistry, and I don't know anything about chemistry; only medicine.”

Yes, this Colusa ointment works wonderfully in the treatment of hemorrhoids. There is not a very large dose of benzocaine in this oil, probably two to five per cent is quite sufficient for a treatment.

(Testimony of Dr. W. T. S. Vincent.)

I have noticed there is less than one per cent here. I sometimes go and dip into my ichthyol jar and my sulphur jar and mix up an ointment, and because of long experience I don't have to use the scales.

I think I had a patient named Ruth Burns, but I have a large practice and I can't remember all names. I do remember Guidry. I only keep case records; I have never sent out a bill in my life; I figure if a man cannot pay, he can get off with it. Yes, I kept a card case record of A. J. Guidry.

---

#### MISS EVELYN MARIE COSTELLO

was then called as a witness on behalf of defendants, and testified as follows:

I am a typist; I formerly suffered from a skin disease known as eczema for seven years; it affected various portions of my body and was accompanied by an itching condition, very much so. I treated at the Mayo Clinic at Rochester for three years; they did not cure me. I treated with doctors here, but none of them cured me. Yes, I went to many doctors; every time I would hear about a doctor who might help me, I went to him. Yes, I could give the [73] names of many of these doctors. I finally tried Colusa Oil about two months ago; it helped me very much; I don't know if it has cured me, but it has given me lots of relief; my skin

(Testimony of Miss Evelyn Marie Costello.)  
has become smooth again; the redness has disappeared and the itching stopped; I had used this oil only five or six days and I noticed it was better. (Here the witness showed her hands and arms to the jury.) It alleviated my itching condition very much; it did this very quickly. I had this eczema on various portions of my body, large patches of it. I had it on the top of my hands and all over my arms. Immediately prior to my use of Colusa Oil these portions of my body where I had this eczema were very red and scaly.

On cross examination, the witness testified:

The nature of the eczema I had was called atopic eczema. I'll have to wait a little longer to find out whether I am cured or not, but I do think it is much better; that alone is enough.

---

### MARCO SABLICH

was then called as a witness on behalf of the defendants, and testified as follows:

I live here in San Francisco; I formerly suffered from a skin ailment on both arms and legs, called psoriasis; I was treated by over thirty doctors for twenty-three years, both here and in Europe; I went to Europe in 1937, not seeking relief, but seeking to get cured.

The witness was asked to describe the portions of his body which were affected.

(Testimony of Marco Sablich.)

“The Court: Go ahead and take off your coat and show the jury your arms.”

(Thereupon the witness removed his coat and exhibited his arms to the Court and jury.)

My arms, legs and head were affected with psoriasis; this was accompanied by scaling, peeling and itching; the scales dropped off. I used Colusa Oil for five weeks. I started to try it and in three or four days the itching stopped eighty per cent; [74] then the peeling stopped and I could sleep. I used not to be able to sleep, waking up two or three times during the night. The scales disappeared. I consulted five doctors in Europe. In five weeks I have got more relief from Colusa Oil than in fifteen years.

The witness was then cross examined and testified further:

I still have a mark; the peeling is gone, but the red is still there. Every day is better. I had this for twenty-three years. It stayed the same for the last five years. I started using the oil five weeks ago, May 20th.

---

MISS ADELE DAVIS

was then called as a witness by the defendants and testified as follows:

I am a beauty operator in Oakland; I suffered from a skin disease for five years; the doctor said it was eczema; I couldn't sleep nights it itched so, and

(Testimony of Miss Adele Davis.)

I was miserable all the time; I had previously used many remedies and had consulted doctors; they did not cure this condition; they didn't even stop the itching.

I bought a bottle of Colusa Oil and put the application on as soon as I got home, and I had immediate relief. Really, to me it was magic. That is all I can say for it. I used it and could feel a sort of penetration; from that time on I have never had an itch on my neck. I first used it about in February of this year.

There was no cross examination.

---

DR. GILBERT L. MEAD

was then called as a witness on behalf of the defendants and testified as follows:

I reside in Oakland; I am the husband of Mrs. Mead who already has testified; I had occasion to use Colusa Natural Oil for a burn; I suffered a burn two weeks ago and I used some of this oil on it; and within half a minute the stinging ceased; it was quite a severe burn.

---

DR. C. E. VON HOOVER

was then called as a witness on behalf of the defendants and testified as follows:



(Testimony of Dr. C. E. Von Hoover.)

I reside in San Antonio, Texas; I am a Doctor of Science [75] in Pharmacology and Pharmaceutical Chemistry; Pharmacology is the action of all drugs as to living cells and the reaction on the human and animal families. I have practiced the profession of pharmacology since 1928. I am a director of a laboratory and clinical testing agency in San Antonio; it is partially owned by myself and the clinical staff, who do the actual application of physiological tests.

I am a Master of Science from Kings College, London; Doctor of Science and Pharmacology at the University of Vienna; Ph. D. at the University of Vienna in 1928. My first college was the New York Chemical College, now called City College; that was in 1922; there I studied biochemistry for eighteen months; then I was awarded the Smedley D. Butler scholarship and was sent to Kings College in London where I studied for two years from 1924 to 1926; I there studied pharmacology and general science; that is, microbiology; I have a degree of Master of Science from that college; I was at the University of Vienna for two years under the Smedley D. Butler Scholarship; there I received the degree of Doctor of Science; the courses covered microbiology, laboratory, pharmacology and general science. I studied *Materia Medica* at the University of Vienna; we took the *Materia Medica* and used the pharmacopoeia of the United States because we were in the American

(Testimony of Dr. C. E. Von Hoover.)

section. We study the same courses as an M.D., except we don't actually engage in the application and diagnosing, such as to administer medicine and treatment. I graduated from Vienna in 1929.

In 1923 I was with N. C. Goodman's Research Laboratory in New York, one of the largest manufacturing and research chemists in the United States; I was with them about a year; I was part of the clinical staff, testing pharmaceuticals, externally and internally; ointments and various products, new products that the laboratory admitted for testing.

“Q. Did that include the testing or analysis of any drugs or products to be used in the treatment of any skin disease? [76]

A. Yes, pharmaceutical chemistry.

Q. Did you have occasion to test and analyze in this employment drugs and preparations for the treatment of skin diseases?

A. Yes, we had clinical material from the various charitable clinics where we obtained the material; and, of course, the M.D.'s were always in consultation with the doctors of science. We tested out on a patient to see if a preparation was worth the therapeutical value, or if it was dangerous to the patient. We tested the safety of the preparation.”

In 1930 I organized a clinical testing agency under my own name, and there I represented the manufacturing chemists, and I have operated the

(Testimony of Dr. C. E. Von Hoover.)

agency ever since. Yes, I can name a few of the many firms I have as clients; N. C. Goodman Laboratories, for whom I worked at one time, are clients of mine and I have a clinical investigation under way for them now. I do work for Bauer & Black, in Chicago, Dermo Laboratories, Detroit; Deep Syrol. These firms are manufacturers of preparations for treatment of skin diseases. We are consulting representatives for Emerson Drug Company and Piquot Grape Salts. We also do work for the Vitamin Research Company, manufacturers of synthetic vitamins.

Our work for these various clients may be generally described as follows. The first step when we are retained is to test a sufficient amount of material, and we attempt to look into the formula and pharmaceutical chemistry to ascertain if the formula is in accordance with pharmaceutical standards.

“Mr. Gleason: Q. Let me digress for one moment: Do the men in the pharmaceutical profession have what I term a dictionary? Mr. Doyle terms it a bible.

A. We have a Pharmacopoeia No. 11; and we have the Homeopathic Pharmacopoeia.

Q. What are those Pharmacopoeiae?

A. They are the laws of dosages for internal and external medicines [77] of every nature.

Q. We will come to that later, Doctor; but I wanted to get that cleared up now. On behalf of your clients you take preparations, drug and other

(Testimony of Dr. C. E. Von Hoover.)

preparations and test them for the purpose of determining their therapeutic or curative value?

A. Yes.

Q. Is that your business? A. That's right."

We have a clinic for that purpose. We obtain the human material from charitable clinics for physiological testing. No, we do not make up our minds as to the efficacy of a preparation for treatment of a disease merely by reading a formula, absolutely not. [78]

In my clinic I have the medical clinician, the M. D., the one that diagnoses, the one that prescribes, the one that applies or gives the particular medicine. Dr. Beal is one of my assistants; he is acting superintendent and U. S. Public Health Officer. He is Assistant United States Surgeon, and in charge of the various public health matters, including immigration matters, in San Antonio. In addition to Dr. Beal, I have Dr. A. R. Burchelmann, M. D., he is the examiner and former Health Officer of San Antonio, and past Trustee of the American Medical Society. I also have Major Burby, retired Trustee of the American Veterinary Association, who is my veterinary consultor in the small animal practice. Yes, we use animal therapy to determine, especially, the safety of the preparation, and to assure that there won't be an intolerance of toxicity when applied to the human in the clinic. I keep the case record and follow the physi-

(Testimony of Dr. C. E. Von Hoover.)

cian in the clinic. I am not a physician, an M. D. Yes, these tests are under my direction.

In the course of my practice, I have submitted reports to and testified before the Federal Trade Commission on many occasions, and also before the Food and Drug Administration. I have been a witness for the Federal Trade Commission in labeling matters.

Yes, we made clinical tests in our laboratory and clinic of Colusa Natural Oil and Colusa Hemorrhoid Ointment.

“Q. Without going into details, I want to find out, first, what you did generally in order to test this remedy.

“Mr. Zirpoli: You will have to bring in the doctors that made the test. You cannot take a man who is not a physician and surgeon, and who is not competent.

“Mr. Gleason: This man’s business is to test drugs.”

I made tests of Colusa Natural Oil as a pharmacologist and I have the reports. I also tested the oil on animals. I am not a veterinarian, but I am a graduate of veterinarian life science.

“Q. Did you test the oil on human beings?

A. Yes. [79]

Q. First describe the tests that you made of this oil in its application to animals.

“Mr. Zirpoli: I object. He is not qualified to make an application of medication upon animals,

(Testimony of Dr. C. E. Von Hoover.)

or upon humans, and he is not qualified to treat animals or humans.

“The Court: Proceed.

“Mr. Gleason: Q. Briefly describe, Doctor, the test.

A. We had tests with a——

“Mr. Zirpoli: I object again on the ground this man is not competent to testify.

“The Court: In the interest of time I will allow it.

“A. I tested it with a parasital agency of the product in canine dermatology.”

In this canine dermatology, the follicular mange attacks the roots of the hair. We submit the demodectic folliculum to the microscope in a plate. There are five stages, from the egg to the mature bug. We put them under the microscope to see if they are alive; then we immersed them in this oil and put them away in a germ proof place. In an hour or two we bring them back and put them under the microscope. Yes, I personally did all this. The purpose of this is to determine the germicidal agency, and, if any, parasital. Yes, to determine whether or not this oil would apply to the mange condition of a dog, and whether or not it would destroy it. In these tests of Colusa Oil, I personally observed under my microscope that from the egg to the mature bug, these were dead; we tried this on a number of dogs. Yes, this is the practice we follow in testing for Bauer & Black, Goodman, and the rest of our clients.

(Testimony of Dr. C. E. Von Hoover.)

“Q. Now, with respect to the test that you said you made on human beings, tell us what you did with respect to the testing of Colusa Natural Oil on human beings.

“Mr. Zirpoli: I submit he is not competent to administer [80] oil to human beings as medication, and this is not proper evidence. It is incompetent, irrelevant, and immaterial. He has no right to treat anyone.

“The Court: I will limit it to what he did, himself.”

With respect to these tests on human beings, I reported these findings to the clinicians to assure them of the safety; we had psoriasis, athlete’s foot and the different types of eczema. A case record was made out. With the physician we select the patient, and the physician diagnoses the patient. I am with the physician. He dispenses the oil, a sufficient amount for two or three days and the patient returns to the clinic.

“Mr. Zirpoli: Under those circumstances, the doctor is the only competent witness.

“The Court: I have limited the testimony and I instruct the jury it is limited to what this witness has done, if anything, himself, in relation to this test, so-called. Proceed.”

We procured our patients from the Robert Greene charitable clinic. Yes, I saw the patients, absolutely. I observed their condition. I personally took scrapings of skin from the patients in athlete’s foot

(Testimony of Dr. C. E. Von Hoover.)

cases and tested them under the microscope, and if it was a true case of athlete's foot, we used Colusa Oil for treatment.

I first learned of Colusa Oil through a patient at this clinic who had a difficult psoriasis case.

Our clinical testing of Colusa Natural Oil lasted over a period of several months, beginning in April, 1942 and lasting until about June 9th.

“Q. In the course of this clinical test, in charity clinics, and in your laboratory, how many cases of psoriasis were tested with Colusa Oil by you?

“Mr. Zirpoli: I object to that as incompetent, irrelevant, and immaterial. This man is not competent to testify as to [81] psoriasis. I object to that.

“Mr. Gleason: We submit two things: first, this man had to study *Materia Medica*, and the diseases of the skin, and he is as competent as a practicing physician.

“The Court: The testimony shows that he kept the case history. What else did he do? The record is clear on that matter.

“A. I personally take the scrapings from the skin and subject them to the microscope and ascertain their constituents. Yes, in the course of these years of study I have told you about I did study skin diseases.

“Q. Did you study the literature and existing knowledge of psoriasis and eczema, and all other skin diseases?

“A. All doctors of science are very much in-



(Testimony of Dr. C. E. Von Hoover.)

terested in literature, and we read all the literature on psoriasis.

“Mr. Zirpoli: May I ask that go out?”

“The Court: It may go out.

“Mr. Gleason: Is that a part of your training?”

“A. It is a part of our required course.

“Q. After the oil was applied in the clinic, did you observe its effect upon the patient?”

“A. Yes.

“Mr. Zirpoli: I object to his observation of the effect of a medication on a patient. He is not competent to testify to the effect of a medication on a patient.

“Mr. Acton: I don't like to argue after your Honor has ruled, but the law is, I think, your Honor, that a man may observe a person, and may know that a person is undergoing a certain type of medication, because he is undergoing it right in his own home, or in his laboratory.

“Mr. Gleason: Q. Did you see the Colusa Natural Oil applied to people who had psoriasis in this clinic? A. Yes.

“Mr. Zirpoli: Just a moment, I object to that. He is not competent to testify they had psoriasis.

[82]

“The Court: Objection sustained.

“Mr. Zirpoli: There are methods of proving those things by bringing proper witnesses.

“Mr. Gleason: Did you see that ointment, Doctor, applied to people who had skin diseases?”

(Testimony of Dr. C. E. Von Hoover.)

“A. Yes.

“Mr. Zirpoli: The same objection. He is not competent to testify they had skin ailments.

“The Court: I will allow the question and answer to stand. Let us get through with this witness.”

I observed one hundred clinical tests from the Burchelmann Clinic and twenty-five from the U. S. Public Health by Dr. Beal. We have the clinic and Dr. Beal or Dr. Burchelmann is always present in the clinic all the time. We have but one clinic, a big clinic, where we put the material in, one hundred patients at a time. Dr. Beal, Dr. Burchelmann and myself are all present. We are always in the clinic together.

I remember the case of a Mr. McDonald, 809 South Alto Street, who is a fairly representative case. He had schizo-rubra eczema in his hand for about twenty years; that was treated with Colusa Oil.

“Mr. Zirpoli: I object to any testimony with relation to the character of the disease.”

Yes, I caused a photograph to be made of this patient's skin trouble. This photograph was then marked Defendants' Exhibit F for identification. This photograph is of the hand of J. R. McDonald; he was treated with Colusa Oil; this photograph was taken before starting treatments.

The witness was then shown another photograph which was marked Defendants' Exhibit G for iden-

(Testimony of Dr. C. E. Von Hoover.)

tification; that photograph shows Mr. McDonald's hand after completion of treatment with Colusa Oil.

I remember Mrs. A. Nelly of San Antonio, Texas; she was a [83] housewife, seventy years of age, who had a varicose ulcer.

“Mr. Zirpoli: I object to all of this testimony, first of all, as hearsay, as to her age, and his conclusion and opinion as to her having a varicose ulcer. He is not competent or qualified to testify to that. It may be the fact, but nevertheless, he is not the proper witness for it.

“Mr. Gleason: We submit, if the Court please, the statement that any man who has studied the *Materia Medica* and who has studied the diseases and taken the necessary and prescribed courses to obtain the degrees this man has, is competent to testify as to whether or not a given condition is a varicose ulcer, or eczema.

“The Court: I will allow him to answer with the hope we will get through soon.

“A. Mrs. A. Nelly is the varicose ulcer.

“The Court: How do you know?

“A. Well, from my experience, your Honor, in the laboratory, and as a doctor of science, and from the knowledge I have of *Materia Medica*, and dermatology and therapeutics, I determine that.

“The Court: By observation.

“A. By observation, yes sir.

“The Court: That is what you base your testimony on?

(Testimony of Dr. C. E. Von Hoover.)

“That is what I base my testimony on, yes sir.

“The Court: All right, proceed.

“Mr. Gleason: May I have this picture marked next in order for identification?”

Thereupon the photograph was marked Defendants' Exhibit H for identification.

“Mr. Zirpoli: May I ask one other foundational question?”

“The Court: You may.

“Mr. Zirpoli: You are not a pathologist, are you?”

“A. No sir, I am not a pathologist.

“Mr. Zirpoli: Now I object to his conclusion as to the [84] woman having a varicose ulcer on that further ground.

“The Court: I will sustain the objection and instruct the jury to disregard the testimony.

“Mr. Gleason: May we have an exception?”

“The Court: You may have an exception.

“Mr. Gleason: In any event, Mrs. Nelly was suffering from a skin ailment? A. Yes.”

I am now looking at Defendants' Exhibit H for identification which I recognize as a photograph of Mrs. Nelly's leg with this invasion in it, if you want to call it that, if I am not permitted to call it a varicose ulcer; she was treated with Colusa Oil in the course of my clinical testing, which I previously have described. I personally observed and watched the case, and on the seventeenth day she returned to the clinic and I caused another photograph to be made to show the progress.

(Testimony of Dr. C. E. Von Hoover.)

At this point, Mr. Gleason asked another photograph be marked Defendants' Exhibit I for identification. This photograph, Defendants' Exhibit I for identification, shows the right foot and part of the leg of Mrs. Nelly, taken seventeen days after her first admission and treatment in the clinic.

Thereupon, Defendants' Exhibits H and I for identification were admitted, in evidence, over objection, as Defendants' Exhibits H and I.

Thereupon, Defendants' Exhibits F and G for identification were offered in evidence and were admitted, over objection, as Defendants' Exhibits F and G.

Yes, approximately one hundred twenty-five cases of skin diseases of various kinds were treated in this clinical testing laboratory, and Colusa Oil was used in these treatments.

"Q. Were any cases of psoriasis treated in that clinical testing laboratory?

"Mr. Zirpoli: I object to that; he is not competent to [85] testify as to any cases of psoriasis, or their treatment.

"The Court: Objection sustained."

I have had occasion in the course of my professional training at various colleges and in my practice to study skin diseases, and particularly psoriasis; I have studied dermatology; I have had occasion to study the eczema family of which there are forty types. I have studied varicose ulcers. As a result of my training in dermatology, and as a result of clinical testing work in my professional

(Testimony of Dr. C. E. Von Hoover.)

practice, I can identify these various diseases when I see them.

“Q. You tested, as I remember, one hundred twenty-five cases. How many cases of psoriasis were included in that group?”

“Mr. Zirpoli: I object to that, your Honor, again, as this man is not competent to testify to that.

“The Court: If he knows, he may answer.

“A. Twenty.

“Mr. Gleason: How many cases of eczema, approximately?”

“Mr. Zirpoli: The same objection.

“The Court: The same ruling.

“A. Forty, altogether.

“Mr. Gleason: How many cases of athlete’s foot?”

“A. Well, I believe eleven or twelve cases.”

Yes, my wife suffered from a skin disease; she had a fungus infection from the ground from working in the yard. It attacks the nails; it is caused from the trichophyton that gets imbedded into the skin and works its way in and causes itching; it turns the nails dark. I saw an opportunity of trying out this Colusa Oil and I used it on her.

Here Mr. Gleason asked that a photograph be marked “J” for identification, and another be marked “K” for identification, and they were so marked by the Clerk.

The witness was then shown Defendants’ Ex-

(Testimony of Dr. C. E. Von Hoover.)

hibit J for [86] identification, and testified it was a photograph of the hands of his wife, Mrs. C. E. Von Hoover.

I caused the photograph to be taken and it depicts the condition of Mrs. Von Hoover's hands as they were about the middle of March, 1942, before I used Colusa Oil in their treatment. It was a hard case, taking weeks to recover. Yes, the Colusa Oil cleared the hands; there was no sign of the infection.

The witness was shown Defendants' Exhibit K for identification, and testified: this is the photograph of the hands of my wife after concluding four weeks' treatment with Colusa Oil, and it accurately portrays the condition of her hands at that time.

Defendants' Exhibits J and K were then admitted in evidence, over objection, and marked Defendants' Exhibits J and K.

Yes, I observed the use of Colusa Natural Oil on a man named Mercurlin, who met a premature death. He was a deputy sheriff.

"Q. What skin disease did he have, Doctor?

"Mr. Zirpoli: I object to that on the ground that this witness is not qualified to testify to that.

"The Court: Objection sustained.

"Mr. Gleason: Q. Do you know what disease he had?

"Mr. Zirpoli: The same objection.

"The Court: The same ruling.

(Testimony of Dr. C. E. Von Hoover.)

“Mr. Gleason: Q. He had a skin disease, did he, Doctor? A. He did.

“Q. On what part of his body?

“A. On the right arm.

“Mr. Zirpoli: I ask that the answer go out. He is not competent to testify.

“Mr. Doyle: We will take a ruling of the Court.

“The Court: Proceed.”

Scaling appeared and then blood exuded. I observed those conditions; Colusa Oil was used in treatment. No, I did not [87] observe the results of the use of this oil in this case because he met a premature death, being killed by a lawyer.

“Mr. Gleason: Q. What is your opinion, Doctor, based upon the many tests made by you in your laboratory and in these clinics, and based upon your training as a pharmacologist, and based on your studies of the science of pharmacology, what is your opinion as to the efficacy of Colusa Oil in the treatment of psoriasis?

“Mr. Zirpoli: I want to interpose an objection, your Honor.

“The Court: Objection sustained. Proceed.

“Mr. Gleason: Note an exception, if your Honor please.

“The Court: Let an exception be noted.

“Mr. Gleason: Q. Doctor, what is your opinion, based on the tests that you have made, and on your training as a pharmacologist, your observa-



(Testimony of Dr. C. E. Von Hoover.)

tions of the use of Colusa Natural Oil on persons suffering from skin diseases, what is your opinion as to the efficacy of the product in the treatment of such diseases?

“Mr. Zirpoli: I want to make my objection for the record, that this man is incompetent to testify to the efficacy of it.

“The Court: I am going to try to get through with this witness. He may answer it.

“A. Yes, it is an effective treatment.

“Q. What did you observe as to what it accomplishes, Doctor?

“Mr. Zirpoli: The same objection. This is an incompetent witness.

“The Court: He may answer.

“A. The results were good.”

I found this oil had penetrating powers by rubbing the epidermis briskly for two minutes, and it will show under the microscope on the follicles of the hair, and by this I found it penetrates.

If a homeopath consults me as a pharmacologist, naturally I resort to the homeopathic pharmacopoeia; or if the allopath [88] consults me, I resort to the allopathic pharmacopoeia for the doses.

“Q. With respect to these homeopaths, have you had occasion to check and determine what the homeopaths describe as a dose of sulphur?

“A. For the homeopath pharmacologist, you see, the percentage, the metric system isn't used by the homeopaths. They use a potency in the Ma-

(Testimony of Dr. C. E. Von Hoover.)

teria Medica, which is equivalent to the metric system, or percentage, and as to grains. For instance, I may say, if you want gelsenium, or sulphur, the homeopath ointment would be a 12 potency, equal to about 1/10 of a grain, or a per cent. If it is a question of allopathy, in the regular school of medicine, there is your Pharmacopoeia that says two per cent is effective. We must say, as pharmacologists, as to both schools that consult us. Therefore we have two books."

Yes, based on my training as a pharmacologist, and as a man who tests drugs, and based upon my study of that subject, and based upon my observation of the use of Colusa Natural Oil, it is my opinion that this Colusa Oil is efficacious to relieve discomfort and pain, and that it is efficacious to inhibit the spread of skin irritation over the normal skin surface.

---

Then ensued a discussion between Court and counsel as to the length of the remainder of the trial. The Court ordered each side to state the names of the remaining witnesses to be called and the general subject matter of their testimony. This was done. An adjournment was then taken to Friday, June 26, 1942.

Trial was resumed on Friday, June 26, 1942.

Counsel for defendants thereupon made the following statement to the Court, viz:

(Testimony of Dr. C. E. Von Hoover.)

“Mr. Acton: If your Honor please, before we conclude the direct examination of this witness, I want to take just not to exceed four or five minutes’ time this morning in giving the Court the benefit of my research in the law library last night on the [89] qualifications of this man as an expert, and to call to the Court’s attention three cases where men not physicians and surgeons were allowed to testify as experts regarding the applications of various substances to the human body.”

---

Both sides then argued this point, and thereupon the witness Von Hoover testified further as follows:

At the end of my three months’ clinical investigation of Colusa Oil to determine the efficacy of this preparation, I prepared a report which covered both the animal and human therapy; I personally prepared the clinical findings and report and I have that report here with me.

At this point, the Court permitted Mr. Zirpoli to ask questions of the witness who thereupon testified:

I prepared these reports on the 28th day of May, 1942; they were prepared by me; I referred to the reports of doctors and physicians in our clinic; we make up our case record which is signed by the physician.

(Testimony of Dr. C. E. Von Hoover.)

Direct Examination

(Resumed)

I personally observed each and every case referred to in the report; and I was present in the clinic when this oil was administered to the patients. This investigation was started around April 1st and completed May 28th. At the time of completion of the investigation, I sat down and typed this report covering the results of it; I relied only on the case records, the actual facts there of the patient; these records are kept in our clinic; these case records have been made available to the Federal Food and Drug inspectors in connection with this case; ever since the adoption of the Food and Drug Act, these inspectors have examined our records. This report is based on my knowledge of the cases referred to.

Mr. Zirpoli again was permitted to examine the witness, who continued: [90]

My secretary and I wrote these case reports in the presence of the physician, and I personally examined each of the cases on which we have a record and on every one of the days the patient appeared. I was with the physician when these reports were made. I am not a medical doctor; I am a pharmacologist; I rely on the medical doctor in the matter of treatment.

Then ensued an argument between counsel.

“Mr. Gleason: We are going to ask this witness to testify from a memorandum made by him at a time when the facts were fresh in his mind as

(Testimony of Dr. C. E. Von Hoover.)

to the number of patients, their ages, duration of treatment, and the physical facts with respect to it in all of these various diseases, and we submit the code section—I think it is 2047—permits the witness to use memorandum records—

“Mr. Zirpoli: Yes, I know that.

“Mr. Gleason: (Continuing): —if the memorandum was made at any time when the facts were fresh in his memory. And the law goes further. We have the authorities on it to the effect that the witness can even copy an original memorandum and bring the copy to court and use the copy for the purpose of refreshing his recollection.”

“Mr. Gleason: Q. Dr. Von Hoover, do you have in your possession at the present time an original memorandum made by you of the facts as to your observations of these various diseases, psoriasis, eezema, athlete’s foot, impetigo, varicose ulcers, poison ivy or oak, and hemorrhoids, as to which you and your associates made a clinical investigation? A. Yes.

“Q. And that report was prepared by you, was it not? A. Yes.

“Q. And are the facts there set forth in that report, facts that you personally observed and ascertained in this clinical investigation?

“A. Yes.”

At this time the report was marked Defendants’ Exhibit L for identification. [91]

(Testimony of Dr. C. E. Von Hoover.)

DEFENDANTS' EXHIBIT L FOR  
IDENTIFICATION

6-26-42

CANINE MANGE (FOLLICULAR)

To Whom It May Concern:

Follicular mange is a serious problem in canine dermatology. It masquerades under such names as chronic eczema, "skin trouble," "summer rash," and is also referred to as "red mange," demodetic and "incurable mange". These observations and suggestion is an attempt over a period of many years to find a satisfactory treatment for this troublesome skin diseases.

Cause: A mite microscopic in size, *Demodex Folliculorum*, is the cause of follicular mange. The mite lodges in the hair follicles and sets up an acute condation through the toxins, secretions and excretions. The hatching of eggs and the development of young mites to the mature mites attacking the hair follicule with a resultant irritation.

Symptoms:

In active case the outstanding symptoms are bare spots, constant scratching and biting of the skin, unpleasant and fetid odor. Follicular mange must not be mistaken for Stuttgart's diseases, necrobacillosis and streptococci or staphlyocci. The skin becomes thickened and wrinkled. Usual sites of attack are the forelegs, axillae, abdomen and medial

(Testimony of Dr. C. E. Von Hoover.)

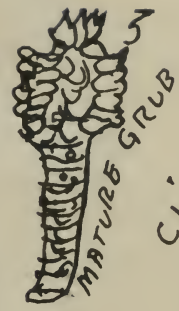
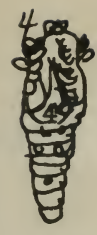
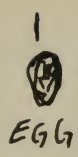
surface of the thighs and also will disclose pimples, pustules and inflamed areas.

Follicular mange must be confirmed by the Microscope. Here are the five living stages of *Demodex folliculorum*, from the egg to the matures "grub":

As Seen and detected thru the microscope:







CLINICIANS  
IN VIVO



(Testimony of Dr. C. E. Von Hoover.)

Treatment:

In order to bring about a cure a deep penetrating external must be used.

Must be well rubbed into the skin so that the germicidal or parasicidal will penetrate to the hair follicles and destroy both the egg and mature grubs.

Good results has been obtained by the writer with an oil-sulphonated-hydrocarbons known as "colusa." It relieves scratching quickly. Dogs will not lick where applied. The results experienced by the writer in this hospital is of good results and to the extent that I am encouraged to continue an extensive tests which is under routine at this writing.

Editor note: Cats are first to show toxic effects and most phenols applied results quick death.

### BROADWAY VETERINARY HOSPITAL.

Colusa oil penetrates quickly and releives tormenting itching which prompts dogs to continue to scratch, especcailly if placed in warms rooms.

When Colusa oil contacts the eggs or the mature Demodex folliculorum it kills both types instanter.

I did not find a single case of toxicity in the application of Colusa oil. The expereinces herein are the results of 20 successful cases treated. \*Cats with mycosis ears (canker ear'') successfully treated 5.

Since that the results was gratifying I am conducting a further extensive tests with the hope that a valueable treatment might be perfected and to

(Testimony of Dr. C. E. Von Hoover.)

pass on to the profession this notice that they might experience the same good results and effects cures in this stubborn skin malady.

(\*Non toxic)

J. W. BURBY, D.V.S.,

Director

(Former Major U. S. Army  
Veterinary Corps.)

Broadway Veterinary Hos-  
pital & Clinic

San Antonio, Texas.

Member: American Veterinary Medical As-  
sociation. State Association. County & State  
Veterinary officer.

Microscopic & Laboratory:

C. E. VON HOOVER,  
M.S.D.Sc.

Subscribed and Sworn to Before Me, this 9th  
day of June A. D. 1942.

J. REYNOLDS FLORES

Notary Public,

Bexar County, Texas.

[Notarial Seal]

---

“Mr. Gleason: I will ask that a report entitled,  
‘A report of the clinical results of Colusa’ be  
marked for identification as the next in order.”

Whereupon the document was marked Defendants’ Exhibit M for identification.

(Testimony of Dr. C. E. Von Hoover.)

DEFENDANTS' EXHIBIT M FOR  
IDENTIFICATION

6-26-42

A REPORT OF THE CLINICAL RESULTS  
OF COLUSA

This report is the results of an investigation with Colusa oil for external use in dermatology, Colusa Oil Capsules for oral administration and Colusa Ointment for hemorrhoids.

The following groups are those treated and as follows:

Group No. 1: Psoriasis:

20 cases of psoriasis: 15 males ages from 22 to 56: Duration: From one to four years. Method and treatment: Colusa External Oil applied by well massaging into the psoriasitic lesions twice daily, usually morning and night and allowed to dry well before retiring or dressing of wearing apparel. 16 patient of Group No. 1 cleared of all lesions completely in 30 days. 4 cases of this group has responded to this treatment to the extent that seventy-per cent of the lesions or psoriasitic sites having disappeared and continued treatment for the remaining are now being carried out. The results in each case is most gratifying.

Group No. 2: The Eczemas:

40 cases of Eczema. 30 males from 11 to 60 years of age. Duration: from a year to five. 6 Females: from 1 year to 50, and 4 infants, 2 males and 2 fe-

(Testimony of Dr. C. E. Von Hoover.)

males, from 1 whose duration was from birth, 1 8 mo of age and 2 of which are 11 and 13 month of age.

I agree with Stelwagon\*<sup>1</sup> that eczema is eczema, however, whatever its variety, and the various type names should not be allowed to confuse. Eczema is the cause of the majority of dermatologic cases.

All of the above group (1) was clear of all lesions in from 3 weeks to a full month, save 1 male and 2 female adults who has improved to such extent that fifty per cent of the lesions present when treatment first began has disappeared. Prognosis of these 3 case good for recovery. Method of treatment the same as used in Group No. 1.

Group No. 3: Epidermophytosis ("athlete's foot")

11 cases of epidermophytosis: 6 males; 5 females: 7 cases acute and 5 chronic. Epidermophytosis is divided into 2 stages; Acute and chronic (ref. Semon<sup>2\*</sup> Atlas of the Commoner Skin Diseases). Cures were effected in the acute stages in a period of 8 to 14 days and in chronic cases 3 weeks. All of the above group (save 1 acute who did not return for treatment) was dismissed completely cured. Method of treatment: Colusa well rubbed in the de-

---

(1\*) Henry D. Stelwagon, M.D.Ph.D. Prof. Dermatology, Jefferson Med. College "Treatise of the Skin" (W. B. Saunder Co. Pub.)

(2\*) Henry C. G. Semon, M.A.M.D.Ph.D.M.R.C.P, Royal College, London "Atlas of the com. Skin Diseases (Pu. Wm. Wood & Co.)

(Testimony of Dr. C. E. Von Hoover.)

nuded sites twice daily and shoes worn when patient appeared for treatment order discarded, fresh white hose worn daily with new shoes.

#### Group No. 4: Impetigo

8 cases of impetigo. 6 male children ages from 10 to 14. 2 Male adults ages, 48 53. Ova of the head lice present in all of the children and so confirmed by the laboratory. In both cases of the adults male the ova was absent and no pediculi, therefore confirmed as streptococcal.

Desired results in all of the above was enjoyed in from 8 to 14 days, save one child who did not report back to the out-patient service for treatment. Cures in 7 case confirmed.

Method of Treatment: Affected area sponged with Colusa oil every 4 hours during the day.

#### Group No. 5: Varicose Ulcers:

3 case of senile leg ulcers. 2 females and one male. Their histories of duration 3 years in 2 case and 1 year in one.

Patients order to remain off their feet. Gauze over cotten pad well saturated with Colusa and applied over ulcer site. This therapy changed to fresh dressing morning and night and in between time an occasional dash of Colusa to keep the dressing wet. This Method of treatment resulted in complete healing of all three case in a month time.

(Testimony of Dr. C. E. Von Hoover.)

Group No. 6: Poison Ivy or Oak.

6 adults, three males and 3 females and 2 small children who contracted poison ivy while on a week end picnic. Hands and faces of the infants was the sites of attack. Of the adults the forearms, shoulders and in the eye brows. Burning and tormenting itching was the major complaint of the adults and in the infant children the cry from pain was continued. In these infants wet compresses of Colusa was applied and in very short period of time the pains subsided and the infants enjoyed sleep. Complete recoveries in all of the above case. Same method of treatment instituted on the infants was carried out on the adults. The adults stated that the application of Colusa brought about a cooling effects and subsided itching instantly. Cures effected in an average of 8 days.

Group No. 7: Hemorrhoids and Pruritis Ani:

3 cases of pruritis ani in males responded to treatment in a week with Colusa Hemorrhoid Ointment. Well massaged around anus.

11 cases of hemorrhoids. 6 males and 5 females (all adults). Colusa Ointment brought relief in all cases from pain, three of these case revealed relief from pain only and was referred to the surgeon. It can be said that Colusa Ointment is a palliative relief for hemorrhoids, and not a cure.

Colusa Capsules was given in Groups No. 1, 2 and No. 7 only.



(Testimony of Dr. C. E. Von Hoover.)

Toxicity, Intolerance and "Flareups":

Not in a single case of this clinical groups did I meet with toxic, bad effects, intolerance or flareups as found in the phenols.

Bad Features:

Colusa oil will stain clothing, linens and household effects, however, the dye effect therein is of thearpuetic value.

Good Features:

Colusa Oil may be used near the eyes without danger, thereby, permitting application to the face so important in most skin diseases.

It releives itching quickly.

It is non-irritating.

A little of the oil covers large areas.

Soothing to raw and denuded lesions and effected areas.

Melts at body heat, releasing its influence and the thearpuetic agents it contains. Fast penetration. Easily massaged into the skin.

Formula:

A liquid containing sulphonated hydrocarbons as a base and many other unknown elements. Nature carefully blended into the base of this oil sulphonated hydrocarbons and other elements that can be taken apart in our laboratory and can not be put back into a complete formula of all the elements therein. Such factors as viscosity, specific gravity and perfect blending into an oil of high thearpuetic

(Testimony of Dr. C. E. Von Hoover.)

value the many valueable agent can in my opinion be done by nature as it has displayed in the oil.

Therapuetic Value:

The results of the clinical patient herein is suffice to establish gratifying therapuetic value. Colusa forms epithelium in an extremenly rapid manner.

It convinced me in this clinical test that it is an improvement over former methods used up to this time.

Control:

Each patient presented himself or was seen in the home once a week, for treatment and clinical observation until dismissed from further treatments.

Conclusions:

The results of this clinical and laboratory investigation should encourage other physicians to make further scientific and clinical tests in order that a new remedy be brought to the attention of physicians who have daily skin disease problems.

This article is not to be used in any un-ethical manner, whatsoever.

A. BERCHELMANN, M. D.,  
Clinician.

Member: American Medical Association. Bexar County Medical Society, Selective Service Administration.

(Testimony of Dr. C. E. Von Hoover.)

Former: House Physician Santa Rosa Hospital,  
City Health Officer, San Antonio, Texas. Capt.  
U. S. Army Medical Corps.

C. E. VON HOOVER,

M.S. Dsc. Phd.

Chemistry and Laboratory  
and Technical Assistant to  
the Clinician.

Subscribed and Sworn to before me this the 28th  
day of May A. D. 1942.

[Seal]

J. REYNOLDS FLORES

Notary Public,

Bexar County, Texas.

---

“Mr. Gleason: I will ask that a report entitled,  
‘Some clinical experiments with a sulphonated  
hydrocarbon oil’ be marked for identification.”

Whereupon the document was marked Defend-  
ants’ Exhibit N for identification.

“Mr. Gleason: Q. You have given me several  
reports, Doctor. Defendants’ Exhibit L for identifi-  
cation, without stating its contents, is what?

A. It is my report.”

I prepared it; that is my report of the results  
of the application of Colusa Natural Oil to the skin  
of animals; associated with me was Dr. Burby, a  
veterinarian.

The witness was again questioned by Mr. Zirpoli.  
I am not a veterinarian.

(Testimony of Dr. C. E. Von Hoover.)

“Mr. Zirpoli: Q. And this is a veterinarian’s report?

“A. You see my name on the other side as the laboratory man, on the other side there, the man that made the findings in the presence of the veterinarian. He couldn’t make those tests because he is not qualified in bacteriology.

“Q. You made the microscopic and laboratory tests? A. That is correct.

“Q. And he made all the veterinarian tests with relation to treatment?

“A. I am not a veterinarian. I do not apply medication. In that case I did; it did not involve the practice of medicine.

“Q. This report is predicated upon the experiments conducted upon the animal?

“A. That is correct.

“Q. Made by Dr. Burby?

“A. And myself. [92]

“Q. But Dr. Burby did the actual administration?

“A. No, I administered to some dogs the application of oil in his presence.

“Q. This purports to be his conclusion as a veterinarian, too, does it not?

“A. Canine dermatology is the practice of the veterinarian, and, naturally, he would sign as the veterinarian, and I as the scientist, the micrologist.

“Mr. Gleason: Q. I am going to ask you to

(Testimony of Dr. C. E. Von Hoover.)

refer to Defendants' Exhibit L for identification and ask you if that document refreshes your recollection as to facts observed by you in these clinical tests on animals as to the therapeutic value and power of the Colusa Natural Oil?      A. Yes.

“Q. Please state briefly the facts observed by you in these clinical tests on this animal therapy as to the results of the use of Colusa Natural Oil on skin diseases of animals. And, Doctor, confine yourself to the facts that you know of your own knowledge and do not read any of the opinions if they are opinions of Dr. Burby.

“Mr. Zirpoli: I want to make this objection, your Honor. He is asked to testify as to the effect of the application of this oil, which calls for his opinion and conclusion as a veterinarian.

“The Court: Objection sustained.

“Mr. Acton: Will your Honor allow us an exception to that ruling?

“The Court: Note an exception.

“Mr. Gleason: Q. Doctor, in the practice of your profession as a pharmacologist and your work for these firms that you mentioned yesterday, including the Goodman Laboratories and the rest of them, as their consultant, do you in the practice of your profession resort to animal therapy to test the efficacy of drugs and preparations?      A. Yes.

“Q. Is that a part of the ordinary practice of the ordinary pharmacologist?

“A. That is the practice.

(Testimony of Dr. C. E. Von Hoover.)

“Q. I will ask you to state, Doctor, the facts that you observed, [93] in your clinical examinations; that is to say, this animal therapy, from the use of Colusa Natural Oil upon the skin diseases of dogs and cats used in this animal therapy.

“Mr. Zirpoli: May it please the Court, I submit that the question is identical in different terms and the objection is made exactly as it was made to the last question.

“Mr. Doyle: This question asks for the knowledge of the witness.

“The Court: The objection will be sustained.

“Mr. Acton: May we have an exception to the ruling?

“The Court: Note an exception.

“Mr. Zirpoli: May I have the record also show that my objection is on the ground that it is irrelevant and immaterial to the case.

“The Court: Let the record so show.

“Mr. Gleason: Q. Doctor, I will ask you to refer to Defendants' Exhibit M for identification. Did you personally prepare that report?

“A. Yes.

“Q. What is it?

“A. It is a report of the clinical results of oil on the physiological tests on human patients.

“Q. Those are the one hundred and some-odd patients you mentioned yesterday afternoon?

“A. This contains a hundred, this report.”

This report contains the essential facts which I

(Testimony of Dr. C. E. Von Hoover.)

observed in the making of these tests with Colusa Natural Oil on those one hundred patients.

“Q. Does this report, Doctor, contain a statement of the facts observed by you in these clinical tests made by you and your associates in your presence, on human beings, to ascertain the therapeutic value of Colusa Natural Oil in the treatment of psoriasis, athlete’s foot, impetigo, varicose ulcers and hemorrhoids? A. Yes.

“Q. And also acne? I omitted acne.

“A. No, I don’t believe we [94] tested it on acne.

“Q. You are right, Doctor, You did test for poison oak and ivy? A. Yes.

“Q. Now then, will you, by reference to this report—

“Mr. Zirpoli: May I ask some foundational questions before I interpose any objections? This report also purports to be the report of Dr. A. Berchelmann, M.D., clinician, is that correct?

“A. Yes.

“Q. And this report also purports to show the effects and results secured by the treatment of these human persons by the physician and surgeon, is that correct? A. Yes.

“Mr. Zirpoli: Then, your Honor, I submit that the witness is incompetent to testify as to the facts herein contained on the grounds that it is not exclusively the information of the witness, and on the further ground that it contains hearsay testimony

(Testimony of Dr. C. E. Von Hoover.)

predicated upon hearsay facts of a physician and surgeon, a person other than himself, and on the further ground that he is not competent as a physician and surgeon to testify as to the effect and results.

“The Court: Same ruling. The objection will be sustained.

“Mr. Acton: May we be allowed an exception to the ruling?

“The Court: Note an exception.

“Mr. Gleason: You testified yesterday as to your opinions and conclusions as to the efficacy of this drug in the treatment of these various diseases. Did you investigate in these tests on human beings to determine the toxic effect of the preparation?

“A. I make the toxic test before it is submitted to clinicians. That depends on me.

“Mr. Zirpoli: We will admit that it is not poisonous, counsel.

“Mr. Gleason: Not toxic?

“Mr. Zirpoli: Yes, poisonous; toxic means poisonous, I [95] think. There is no issue as to that.

“Mr. Gleason: Q. And in the cases personally observed by you in these clinical tests, in any of these cases did you observe any unfavorable or injurious results from the use of Colusa Natural Oil on these patients?

“Mr. Zirpoli: Objected to as calling for an opinion and conclusion, your Honor, of this witness, who is not a physician and surgeon.



(Testimony of Dr. C. E. Von Hoover.)

“Mr. Gleason: That is his business, if your Honor please, and profession; he tests drugs.

“The Court: The objection will be sustained.

“Mr. Acton: May we note an exception to that ruling?

“The Court: Note an exception.”

The witness then testified on cross examination:

I am a Doctor of Science; I am not a physician and I am not a veterinarian; I operate a clinical investigation agency; I do bacteriology; that is incorporated in my Doctor of Science degree. I am permitted to practice bacteriology. Colusa Oil was never tried out as a germicide; we did not make any germicidal test. In determining if a product has germicidal properties, I would submit it to the staphylococci germ test, the streptococci test; to bacteriological tests.

Yes, reference was made yesterday to the United States Pharmacopoeia No. 11. We use it in allopathy; we use the Hemeopathic Pharmacopoeia when serving a homeopathic manufacturing chemist. We rely on the pharmacopoeia absolutely; I wouldn't say it is our Bible, it is our law.

“Mr. Zirpoli: Q. And that is the one used for your studies in Europe?           A. Yes.”

The United States Pharmacopoeia is made up of the findings of pharmacologists, and through practice over a period of ten years, and in ten years the pharmacologists, leading druggists, we say “pharmacists”, all the men in the science field of

(Testimony of Dr. C. E. Von Hoover.)

pharmacology meet and committees are appointed by leading pharmacologists to define the rules of practice of prescription [96] and dispensation, of drugs and chemicals and all that pertain to the treatment of human ills are incorporated into that Pharmacopoeia. The Pharmacopoeia is prepared with the authority of the United States Government.

With respect to sulphur ointments, there are various sulphur ointments. The allopathic formula generally used for sulphur ointment is an ointment of five per cent and ten per cent sulphur and some cholesterin base or refined petroleum base. I think that is in the Pharmacopoeia; we use five and ten per cent sulphur, and we use a cholesterin base; no other active ingredients; cholesterin 90, and five per cent sulphur; five and ten are in the United States Pharmacopoeia, but we make several; we came out with several sulphur ointments with lesser ingredients than are in the Pharmacopoeia. The generally accepted ointment has five per cent sulphur; that is in the United States Pharmacopoeia.

“Mr. Zirpoli: Q. You tell us the generally accepted ointment has five per cent?”

“A. Five and ten.

“Q. This is the United States Pharmacopoeia, isn't it? A. Yes.

“Q. No question about that?”

“A. No question.”

At this point, Mr. Zirpoli asked that a book be marked Government's Exhibit 14 for identification.

(Testimony of Dr. C. E. Von Hoover.)

“Mr. Zirpoli: Q. Just tell me what is the formula for tincture of iodine.

“Mr. Gleason: You mean the allopathic formula?

“Mr. Zirpoli: He is a pharmacologist; he is qualified.

“Mr. Gleason: You mean the allopathic formula?

“Mr. Zirpoli: Allopathic, yes.

“A. I am not a chemical engineer. If you are speaking about extracting and making up from the iodine basis, I am not——

“Q. How much iodine is there in the tincture of iodine?

“A. Tincture? Wait just a moment. I believe—let’s see; in tinctures—extract of iodine you refer to don’t you? [97]

“Q. I am talking about the tincture of iodine. That is the common, ordinary name, tincture of iodine, as it is set forth in the Pharmacopoeia.

“Mr. Gleason: We object to that statement of counsel, if the Court please.

“Mr. Zirpoli: I am asking him if that is a fact. I think I am entitled to ask him. Isn’t that the common, accepted name given in the Pharmacopoeia of the United States, Volume II, tinctura Iodi or tincture of iodine?

“The Witness: Yes.

“Mr. Zirpoli: Q. All right. Now, tell me, how much iodine is in it?

(Testimony of Dr. C. E. Von Hoover.)

“A. I believe—let’s see; tincture of iodine is a colloidal extract.

“Q. What is the percentage?

“A. Let me see; I would have to refresh my memory. Those things grow old on me.

“Q. In other words, you don’t recall at this time?           A. No.

“Q. Can you tell me what gluside is?

“Mr. Gleason: We object to that on the ground that it is incompetent, irrelevant and immaterial.

“Mr. Zirpoli: (Spelling) G-l-u-s-i-d-e.

“The Court: He may answer.

“A. Gluside?

“Mr. Zirpoli: Q. Yes.

“A. You mean one of the glocoses?

“Q. I am asking you. You are asking me what I mean. Can you tell me what gluside is?

“A. It is one of the sugars, isn’t it?

“Q. This isn’t a quiz program.

“A. You are expecting me to answer something I haven’t been through——

“Q. You are a qualified pharmacologist? [98]

“A. I am not qualified to quote everything from a book, any more than you can quote all the law.

“Q. By the way, does Colusa Oil appear anywhere in the Pharmacopoeia?

“A. No, it does not.

“Q. Does it appear in the Homeopathic Pharmacopoeia?           A. No, it does not.

(Testimony of Dr. C. E. Von Hoover.)

“Q. It does not appear in either one?”

“A. No.”

No, follicular mange is not a disease of man.

The witness testified further on redirect examination:

We made no test of Colusa Oil for germicidal properties; most skin diseases are not from germs; they are parasital, either from fungus or external causes.

Follicular mange is not a disease of man; we made the examination on these dogs with the oil to determine the parasiticial efficiency of the oil—to see if it is a parasiticide. In making these tests, I actually put scrapings from the skin disease of the dog under the microscope and observed this oil destroy the parasites. We removed the hair follicles, the root of the hair, they are attached to the root of the hair, they are immersed in the oil and were put away. Our investigation covered the full range starting with the egg and ending up with the full-grown grub.

The witness further testified on recross examination:

“Mr. Zirpoli: Q. What do you mean ‘parasital’? Tell us what you mean.

“A. A ‘parasite’ is——

“Q. You mean ‘parasite’, don’t you?”

“A. I am a Southern gentlemen and my pronunciations are not like you gentlemen of the East, and that thing I do not speak——

(Testimony of Dr. C. E. Von Hoover.)

“Q. Counsel said the same thing; I want to know what you are talking about.

“A. My pronunciation is bad.

“Mr. Zirpoli: Counsel said the same thing.

“Mr. Gleason: I believe I OK'd the mistake.

“The Witness: Another thing I want to tell you. I was [99] overseas and I had a shot in the mouth, and my pronunciation is bad from the last war.

“Mr. Zirpoli: I apologize if it is a question of pronunciation. You mean parasite?

“The Witness: Certainly, parasital.

“Mr. Zirpoli: Q. What is a parasite?

“A. It isn't a germ family; it doesn't belong to the germ family.

“Q. It is not a germ?

“A. I wouldn't classify it as one of the germ family; it is, you might say, of a vegetable origin.

“Q. It is of vegetable origin?

“A. It is probable, but in follicular mange we don't know, because we don't know how the mite ever got on the dog. The *Demodex Folliculorum* attacks the dog.

“Q. In your opinion, all parasites are of vegetable origin?

“A. No, not all are of vegetable origin. This particular one we classify as of vegetable origin.

“Q. How about athlete's foot?

“A. It is fungus, *Trichophyton microsporium*.

“Q. Do you know whether that is vegetable or animal?  
A. That is vegetable.

(Testimony of Dr. C. E. Von Hoover.)

“Q. Do you know what schizomycetes are?”

“A. That is animal.

“Q. That is one of the primary classifications, isn't it?       A. Fungus.

“Q. You say it is animal, and a moment ago you told us that fungi are vegetable.

“A. Fungus is a growth. It is from the earth. It could be classed as vegetable. Certainly it is vegetable. As I told you, I am not a bacteriologist; I only make these investigations of my own accord.

“Mr. Zirpoli: That is all.

“Mr. Gleason: That is all, Doctor.”

---

### MRS. OPAL CAMERON

was then called as a witness on behalf of the defendants and testified as follows: [100]

I reside in Berkeley; I formerly suffered from eczema; I had this disease on and off from the time I was a youngster; I have treated with doctors all my life; I had to wear rubber gloves with cotton gloves underneath. The doctors did not cure me; it keeps coming back at intervals. I heard about Colusa Natural Oil the last attack I had and used it and it cleared up the condition. This disease was accompanied by itching and was very distressing; I couldn't put my hands in water. Yes, sir, this Colusa Oil gave me relief as to the itching; it completely went away within one week. I do not have to use gloves now in my work.

(Testimony of Mrs. Opal Cameron.)

On cross examination the witness testified:

I used this oil early this Spring, in March of this year. [101] Yes, I had this disease off and on for a period of time.

---

### MRS. WILMA WELCH

was then called as a witness on behalf of the defendants and testified as follows:

I reside in Emeryville; I formerly suffered from athlete's foot, which affliction was accompanied by itching; I would say it was a mild case. I used Colusa Natural Oil and obtained instant relief; it cured the condition in three or four treatments.

On cross examination the witness testified further:

I reside in Emeryville. This itching was between each little toe.

---

### ARTHUR W. SCOTT

was then called as a witness on behalf of the defendants and testified as follows:

I am a welder in the shipyards; I was formerly employed by the Empire Oil and Gas Company in Colusa where Colusa Natural Oil is produced. I was engaged in the production of the oil; while working I sustained some burns; it was in '39; I had done some welding and got a little careless and



(Testimony of Arthur W. Scott.)

picked up hot irons and got severe burns on four fingers of my right hand, and it made a terrible scar. The following day I got a burn on the other hand, and they brought some of this oil and I just reached over and put my hand in that oil, and in half an hour I just forgot about that hand entirely; it never blistered or anything; one burn was equally as bad as the other; the oil had a beneficial effect on my hand. I have experienced many burns in my trade as a welder and have used various ointments; I have been a welder for ten years; I have used plain lubricating oil for burns when I couldn't get anything else. I have used Unguentine for such burns.

“Mr. Gleason: Q. State, then if you will, briefly, whether the use of Colusa Natural Oil gave you the same or better relief than the Unguentine had previously given you.

“Mr. Zirpoli: I make the same objection. We don't know [102] anything about Unguentine.

“The Court: Is that all from this witness?

“Mr. Doyle: He hasn't answered the question.

“The Court: The objection will be sustained.

“Mr. Doyle: Exception.”

The witness continued:

I have used Colusa Oil on cuts; I cut my ankle, cut the skin clear down to the bone and all I did was to put some Colusa Natural Oil on it and wrap it up; it remedied it; I took the bandage off in

(Testimony of Arthur W. Scott.)

three days and it was all healed up; I suffered no infection whatever.

“Mr. Gleason: Q. You operated these wells in Colusa County for the production of what we term ordinary crude oil. How many barrels of water are pumped in the pumping of these wells, or how many gallons of water in order to get one gallon of this medicinal oil?”

“Mr. Zirpoli: We object to that as irrelevant and immaterial as to the process of how this is manufactured.

“The Court: Objection sustained.

“Mr. Gleason: The only purpose, if the Court please, is, if I might just state it: there has been put in evidence a mat with the statement on it, ‘Oil worth \$10,000 a barrel’. If counsel is going to direct any attention to that, we want to show, if the Court please, that this barrel of Colusa Oil does cost \$10,000; that it requires the production of thousands upon thousands of barrels of water.

“The Court: Is that all?”

“Mr. Zirpoli: I have a question or two, your Honor.”

The witness then testified on cross examination:

The oil I put my hand in was the oil as it came up from this well; it left a line where the skin was seared; I have not that line now; it gradually disappeared. I worked for Mr. [103] Colgrove up there about two and one-half years.

CHESTER WALKER COLGROVE

was then called as a witness on behalf of the defendants and testified as follows:

I am one of the defendants in this case; my business is producing and marketing Colusa Natural Oil; I have been so engaged for the past three years. Yes, before engaging in this business I made a preliminary investigation of this project; it took me over two years to become sold on this oil—not as to its medicinal quality, but because I recognized it as a merchandising proposition, and I was interested primarily in crude oil in my initial interest in Northern California.

“The Court: We are not concerned here with what you were interested in.

“Mr. Zirpoli: We object on the further ground that there isn’t a question of good faith here. We don’t care whether this was done in good faith or bad faith; that is immaterial. Therefore this line of questioning is likewise immaterial.

“Mr. Gleason: We submit the good faith of the witness is relevant.

“Mr. Zirpoli: It is immaterial.

“The Court: Let us get to the issues involved here in this information.”

I have been engaged in marketing this oil since January, 1940; my first procedure was an advertisement in the Los Angeles “Times” offering the oil on a gratitude price, pay according to your gratitude for the relief you get.

(Testimony of Chester Walker Colgrove.)

“The Witness: The gratitude price offer merely said to pay according to your ability to pay and your gratitude for the relief that you get after you get the relief. That advertisement brought in three hundred and some answers, and we obtained some rather quick clinical results.

“Mr. Zirpoli: Your Honor, I submit that every bit of that [104] testimony is objectionable testimony and properly inadmissible.

“The Court: Gentlemen, be seated. The Court is prepared to rule. The objection is sustained.

“Mr. Zirpoli: I ask that it be stricken out.

“The Court: It will go out. Let the jury disregard it.”

I did not compose the statement, “The emanation is taken up in the blood and as quick as lightning goes to all parts of the body where it kills or checks the disease germs.” Nor did I compose this statement, “Science papers by eminent physicians state that”, followed by quotation. I copied them from a source I relied on as being authoritative. I have a copy of those quotations with me.

As the result of this gratitude price advertisement, Mr. Walter Litholand came to my hotel and I saw him; he would not shake hands with me because of the condition of his hands and said he had not shaken hands for five years. He suffered from a skin condition; his finger nails were two-thirds gone; he was very bitter mentally because of this condition; he was in a bad condition. I observed a desperate man who had scars on his hands.

(Testimony of Chester Walker Colgrove.)

Colusa Natural Oil was used in his treatments; I saw Walter rub some on his hands in front of me in the hotel; I saw him the following Sunday in the presence of Dr. Warren and Mr. Brewer, and he said that Friday was the first good night's sleep he had had in five years; his hands were smoothing up some and his legs also; the itching had stopped.

“Mr. Zirpoli: How does this witness know that the itching had stopped, your Honor? I submit——

“The Witness: The man said so, and he was good authority.

“Mr. Zirpoli: That is hearsay evidence, clearly.

“The Court: It may go out. Let the jury disregard it.

“Mr. Gleason: Q. Did he appear at that time to be in the same mental condition as he appeared on the first occasion when [105] you met him?

“Mr. Zirpoli: I object to that as calling for the conclusion of this witness as to whether he was in the same mental condition.

“The Court: The objection will be sustained. Let it go out and let the jury disregard it. He may state what he observed.

“Mr. Gleason: If the Court please, may I, with the permission of the Court, call attention to a settled rule of law to the effect—I have the authorities and the books here—that any lay witness may give an opinion as to mental condition, as to anguish, torment, joy, happiness.

(Testimony of Chester Walker Colgrove.)

“The Court: He may state what he observed. Let the jury determine it.

“Mr. Gleason: I would like to ask the witness for his opinion, if the Court please, under the well settled rule of law which I have.

“Mr. Zirpoli: I object to that if it calls for a conclusion.

“The Court: He may state what he observed at any time and place himself.”

I observed Walter's bitterness had turned to great relief and joy in having found something that would give him relief; I saw him again two weeks to the day I met him; he shook hands with me; his hands were much improved; they were smooth; lesions and skin conditions I first noticed were not then noticeable. The man was jovial and glad to talk about the relief he was getting; he had been bitter about five or six years of suffering and lack of helpful treatment. His physician's name was Dr. J. W. Warren; he will not be here as a witness on account of the expense involved. No, I did not charge Walter for the oil; I gave the oil to Walter, some \$13.00 to \$15.00 worth.

The “hands” case referred to in the information—the man's name is Homer H. Baumgartner; I first met him on February 28, [106] 1940, in front of the Plaza Hotel in Hollywood; his hands were held up (indicating) in this manner because of the pain; they were covered with matterated scale and were swollen and cracked and bleeding and ugly. I

(Testimony of Chester Walker Colgrove.)

said to him, "I want to show you to a doctor and I want some photographs taken of these hands before you use the oil on them, if you don't object."

"Mr. Zirpoli: I'm sorry. I am going to object to all these conversations between the defendant—

"The Court: Let's get through with this witness."

At that time this mattered scale affected his hands all over; I gave him \$15.00 worth of oil after getting photographs of his hands.

"Mr. Gleason: Q. At the time you got the picture of his hands you went to a photographer's studio, did you not?

"A. I did, and it took half an hour to argue the photographer in letting him come into the photography shop, and he wouldn't do that until he had phoned a doctor that I took him over to first.

"Mr. Zirpoli: I am going to ask that all of that go out.

"The Court: It may go out.

"Mr. Zirpoli: May I ask counsel to instruct the witness not to give us statements made by other persons.

"The Witness: Those were my statements.

"Mr. Gleason: If the Court please, the charge in this case contains these statements with respect to the Walter case—

"The Court: That has no relationship to hearsay testimony. Any hearsay testimony should not go to this jury. That is hearsay; no one knows better than you.

(Testimony of Chester Walker Colgrove.)

“Mr. Gleason: Your Honor, I respectfully—I don’t want to be put in the light of disagreeing with the Court, but I respectfully disagree with the Court. These facts covered by that——

“The Court: That somebody told this witness on the stand——

“Mr. Gleason: Yes, that isn’t hearsay—the fact that [107] somebody told him a certain thing; not for the truth of the contents of the statement, but the fact of the statement certainly proves the res gestae covered by this information. Why is it in there?

“Mr. Zirpoli: No; I think I can state the rule very simply.

“The Court: Be seated, gentlemen. Proceed.”

I saw Mr. Baumgartner after the photographs were taken, the following Friday, two days later; at least fifteen to twenty per cent of the scaling was gone as was the swelling; he could drop his hands to his side without pain; I don’t know if he was finally cured, but the scaling was gone and his hands were cleared up in eleven or twelve days; I have the other pictures certified by the photographer and the doctor.

At this point certain photographs were marked Defendants’ Exhibit O for identification.

The witness continued:

I recognize these photographs, Exhibit O for identification; the one on the left side shows the condition on Mr. Baumgartner’s hands on February



(Testimony of Chester Walker Colgrove.)

28, 1940, as I observed them; the photograph on the right side shows his hands on March 11, 1940; these photographs truly depict the condition of his hands as I observed them; the name appearing there, "Homer H. Baumgartner" was signed in my present by Mr. Baumgartner; this is the "hands" case referred to in the information. I gave this man about \$30.00 worth of oil free of charge.

"Mr. Gleason: Has it been your practice, Mr. Colgrove, in the distribution of this oil, to give it free of charge to hospitals, doctors and whoever wanted it for use if they could not pay for it?"

"Mr. Zirpoli: I object to this, your Honor, as a pure and simple sympathetic appeal.

"Mr. Gleason: It certainly shows good faith, if the Court please. [108]

"Mr. Zirpoli: I submit that good faith is not in issue.

"The Court: The objection will be sustained. Let it go out and let the jury disregard it.

"Mr. Acton: May we also have an exception, your Honor?"

"The Court: Note an exception."

When I first saw him he had to hold his hands up on account of the pain, and on the second occasion, two days later, he could swing them and walk down the street with me with his hands free from swelling and free from bleeding and twenty per cent of the scales gone.

(Testimony of Chester Walker Colgrove.)

Mr. Gleason then offered the photographs marked O for identification, and they were admitted in evidence and marked Defendants' Exhibit O, and then handed to the jury.

I have observed the results of the application of this oil to skin conditions; I used it on an itching eczema spot on myself; it wipes out the pain caused by a burn; I take a capsule every night and have done so for over a year. I have had occasion to observe the penetrating powers of crude oil. I have also had occasion to test in many instances the penetrating powers of Colusa Natural Oil. I have the two types of oil here with me, some crude oil from Los Angeles County and some Colusa Natural Oil. Yes, I will demonstrate them if opposing counsel desires.

“Mr. Gleason: Q. Mr. Colgrove, there is a reference in this information to an alleged failure to place upon certain bottles of ointment a statement of the quantity contained in those bottles, and as a preliminary question: You manufacture and distribute this—your company does, this hemorrhoid ointment?

“A. The hemorrhoid ointment is manufactured for us.

“Q. And you distribute it?

“A. We distribute it. We furnish the oil.

“Q. You originally manufactured and distributed a three-ounce bottle and a quarter-ounce bottle?

(Testimony of Chester Walker Colgrove.)

“A. Three-ounce tube and a [109] quarter-ounce tin box.

“Q. And those were all——

“A. Properly labeled.

“Mr. Zirpoli: I object to that, your Honor, as calling for the conclusion of the witness, what was done in the past with relation to other tubes or other products. That is immaterial, irrelevant and incompetent as to the issue of the labeling of the particular ointment in this case; the label on the ointment speaks for itself.

“Mr. Gleason: We propose, if the Court please, to show these facts: that Mr. Colgrove’s company was engaged in the distribution of this ointment; that they had sold many jars of it under proper labeling; that they reordered from the printer, a firm in San Francisco, some more labels; that due to the inadvertence of the printer—that they had submitted to the printer copy with the quantity stated on it; that due to the inadvertence of the printer that was omitted; I have the firm name, and the man will be called; that Mr. Colgrove discovered it within a very few days, destroyed thousands of labels, and the properly relabeled the ointment, and we submit, if the Court please, that this is directly relevant and competent.

“Mr. Zirpoli: May I be heard on that, your Honor? I respectfully submit that under the Federal Food, Drug and Cosmetic Act if there is a misprinting, if there is a failure to designate upon

(Testimony of Chester Walker Colgrove.)

the particular container the quantity of contents by measure or weight, that whether or not this was done by inadvertence or deliberately or otherwise is totally irrelevant and immaterial. I know counsel is prepared here, possibly, to rise and read some authorities to the Court. I invite this fact to the Court's attention: that at no time have we questioned the good faith of the individual involved here. The question is one pure and simple, regardless of intent or reason or causes therefor, did the defendants in fact ship in interstate commerce a product which was misbranded? [110] And for the reasons which I have stated, which I respectfully submit to the Court is a proper statement of the law, I feel that the question is objectionable, and for that reason I make the objection; and I make the further objection that the statement with relation to prior tubes is irrelevant and immaterial and should be stricken from the record.

(Argument.)

“The Court: Proceed. There is nothing before the Court.

“Mr. Zirpoli: Is your Honor prepared to rule?

“The Court: There is nothing before the Court.

“Mr. Zirpoli: I was objecting to the testimony with relation to the prior tubes as being irrelevant and immaterial, and at the same time, your Honor, I ask that that be stricken.”

At this point the noon recess was taken.

After the noon recess, the trial proceeded:

(Testimony of Chester Walker Colgrove.)

I ordered the printing of the labels; they were printed by the McCoy Label Company of San Francisco; a representative of that company is in the courtroom; her name is Miss Nelson.

“Mr. Gleason: Is Miss Nelson here? Do you have the letter, Miss Nelson?”

“Miss Nelson: Yes, I do.

“Mr. Gleason: I will ask, if the Court please, that this document which has just been handed to me in open court be marked for identification.”

(The letter was then marked Defendants' Exhibit P for identification.)

(Testimony of Chester Walker Colgrove.)

DEFENDANTS' EXHIBIT P FOR  
IDENTIFICATION

6-26-42

Field Headquarters,  
Williams, California

COLUSA PRODUCTS CO.

Colusa Natural Oil

Colusa Natural Oil Capsules

Colusa Natural Oil Hemorrhoid Ointment

General Offices

Mercantile Building

Berkeley, California

Telephone Thornwall 9112

January 22, 1941

McCoy Label Co.

Montgomery and Commercial Sts.

San Francisco, California

Attention Miss Nelson

Dear Miss Nelson:

The labels were picked up Monday and on opening today I find the capsule labels unuseable because they fail to have the following wording on them:

“A Natural unrefined Petroleum oil containing sulphonated hydrocarbons”

which should appear just above the words:

“in capsules for internal use”

(Testimony of Chester Walker Colgrove.)

then following that should appear the amount of bottle contents like:

“30 capsules”—for one label

and

“100 capsules”—for other label

I need 2500 of each, front labels only, next week. Please rush them out and send them C.O.D. Also send me 2500 ointment labels with the same wording on the ointment label that is shown on the enclosed box-cover—plus (please add) “contents  $\frac{3}{4}$  oz.”

You can make up a good label for this that will fit the little blue jar I am sending under separate cover. No back label necessary on the ointment, and I do not want the ointment label to run completely around the jar, halfway around is sufficient. If you can follow same sort of a general pattern as the oil and capsule labels, I will like it.

Sincerely yours,

C. W. COLGROVE

[Label pasted on]: Colusa Natural Oil. A Natural Unrefined Petroleum Oil, containing sulphonated hydrocarbons (Printing canceled; illegible) Colusa Products Co., Williams, Calif.

[Label pasted on]: Colusa Natural Oil. In Capsules for Internal Use. 30 Capsules. Colusa Products Co., Williams, Calif.

[Pen and ink notation]: 30 capsules and 100 capsules (canceled) then—and 100 Capsules.

(Testimony of Chester Walker Colgrove.)

The witness continued:

This letter, Exhibit P for identification, is the letter mailed in the United States mails to this company ordering some labels.

“Mr. Gleason: At this time we offer this letter in evidence, Defendants’ Exhibit P for identification, and particularly that [111] portion of it with respect to the ordering of 2,500 ointment labels. We offer it first in support of our statement this morning—and of course we are going to connect it up with further evidence—that the printing of these labels and the omission of the quantity, three-quarters of an ounce, on certain labels, was an inadvertence of the printer. We have argued that before the recess and your Honor has indicated your position with respect to that. We are not going contrary to that, but we desire to offer this on that phase.

But apart from that entirely, if the Court please, and independently of that, and without in any manner infringing your Honor’s ruling, we think the letter and all of these facts are admissible for this purpose: Mr. Colgrove is on trial as an officer of the defendant corporation and as an agent of it. We have the law and we are prepared to cite it, that a corporate officer cannot be held criminally responsible for any act of the corporation unless he personally participated in that act and is guilty of the neglect or culpability involved. We propose to show, therefore, if the Court please, that Mr.



(Testimony of Chester Walker Colgrove.)

Colgrove had nothing to do with the circulation or the mailing of this label, but that, to the contrary, this individual defendant did everything he possibly could, as is evidenced by this letter, to see that the proper statement of quantity was put upon the jar. And we propose to go further and show that as soon as the mistake was discovered by him it was immediately rectified and the labels destroyed.

(Argument.)

“The Court: I indicated at the recess what I would rule. I haven’t changed my mind. The objection will be sustained.

“Mr. Gleason: Q. Mr. Colgrove, did you personally have anything to do with the mailing or sending or dispatching of this ointment to Snapp’s Drugstore in New Mexico? A. No, sir.

“Mr. Zirpoli: To which I object as irrelevant and immaterial. [112]

“The Court: Let the question and answer stand. Proceed.

“Mr. Gleason: Did you know or have any knowledge that this ointment was being shipped to the Snapp’s Drugstore in New Mexico, I believe it is, with the particular labels on those bottles that were in fact on them?

“A. I did not know that the labels did not contain the three-quarters of an ounce contents.

“Mr. Gleason: Did you eventually discover that such labels were being sent out?

(Testimony of Chester Walker Colgrove.)

“A. I did, and destroyed the rest of them; I destroyed the balance of those labels and ordered correct labels, a new printing of labels.

“Mr. Zirpoli: May I ask that that all be stricken out as irrelevant and immaterial.

“The Court: The objection will be sustained.

“Mr. Acton: May we note an exception?

“The Court: Note an exception.

“Mr. Gleason: Q. When you ordered the labels printed at the McCoy Label Company, did you in your order ask them to put on the label the designation ‘3/4 of an ounce’? A. I did.

“Mr. Zirpoli: Same objection, your Honor; irrelevant and immaterial as to what he did.

“The Court: Objection sustained.

“Mr. Gleason: Q. In the information, Mr. Colgrove, there is a statement set forth, ‘Colusa Natural Oil is credited by other users with producing relatively as remarkable results as above pictured in relieving irritation of external acne, eczema, psoriasis, athlete’s foot or ringworm, poison ivy, varicose ulcers, burns and cuts.’ You have been marketing this oil for approximately two or three years, as I recall your testimony. Upon what did you base this statement that is contained in this information, the statement just read?

“Mr. Zirpoli: I object, your Honor, it is irrelevant and immaterial as to what he based it on; all that matters is the fact [113] that the statement is there and the statement speaks for itself.

(Testimony of Chester Walker Colgrove.)

“Mr. Gleason: In this information are various statements quoted from the advertising matter. Counsel has submitted to your Honor instructions that we desire to argue to the effect that if any false statement is contained in any portion of the advertising matter, the mats or otherwise, that this man can be convicted. We desire to show the truth of this statement. We desire to show that when Mr. Colgrove said that ‘Colusa Natural Oil is credited by other users’ he was telling the truth, and we desire to submit to your Honor hundreds of testimonials in regard to this product received from users by the defense.

“The Court: Testimonials cannot go into evidence here.

“Mr. Gleason: I don’t want you to think I am going contrary to your ruling. I make the statement, I make it as an officer of this court, that I believe under this information, under settled principles of law——

“The Court: You may believe whatever you see fit.

“Mr. Gleason: May I present the law to your Honor on that subject?

“The Court: No, we will proceed. You make your offer of proof and you have a record to protect you, and I will rule.

“Mr. Gleason: Q. Mr. Colgrove, in the course of your marketing of this product, can you tell us the number of sales that have been made of this product to people throughout the United States?

(Testimony of Chester Walker Colgrove.)

“A. Many thousands of them.

“Q. You sold your product on a money-back guarantee, did you not?      A. Yes.

“Q. Can you tell us how many of the people to whom you sold this product throughout the United States availed themselves of the opportunity to receive their money back?

“Mr. Zirpoli: I object to that as irrelevant and immaterial, and a form of negative proof. I object to it. [114]

“The Court: The objection will be sustained. We are not here concerned with any money-back guarantee. There is no issue involved in this case about money or money back for any sales. Let us proceed.

“Mr. Acton: Will your Honor allow us an exception to the last ruling?

“The Court: Certainly.

“Mr. Gleason: Then we will make the offer of proof and that will conclude this subject. We offer to prove the following facts by this witness at this time:

“First, that from persons to whom this preparation was distributed by these defendants throughout the United States, hundreds of testimonials, the originals of which are here available for inspection and we have gone to the trouble of copying them—hundreds of testimonials, voluntary testimonials, have been received by this company and by this defendant.

(Testimony of Chester Walker Colgrove.)

“We further offer to prove that this product was marketed and distributed to these thousands of persons under a money-back guarantee if not satisfied, and that out of the thousands of people to whom that guarantee was made, approximately two per cent availed themselves of the guarantee.

“We further offer to prove, if the Court please, the truth of the statement contained in this information. We offer these testimonials, and these testimonials will prove the truth of the statement that ‘Colusa Natural Oil is credited by other users with producing relatively as remarkable results as above pictured in relieving irritation of external acne, eczema, psoriasis, athlete’s foot or ringworm, poison ivy, varicose ulcers, burns, and cuts,’—the statement contained at lines 13 to 16 on page 3 of this information and reincorporated by reference in later portions of the information. And we offer those facts, if the Court please, as being relevant, pertinent and competent in the [115] proof of the issues involved in this case.

“Mr. Zirpoli: If I might respectfully submit, your Honor, as I have heretofore had occasion to state in arguing various points before the Court, that there was no element of fraud or bad faith involved; it is a simple case of misbranding, and that therefore testimonials are not admissible in evidence. Had this been a fraud case, then the position taken by counsel would have been a proper one, but this is a misbranding case and not a case predicated upon fraud or fraudulent intent.

(Testimony of Chester Walker Colgrove.)

“The Court: The objection will be sustained.

“Mr. Doyle: Exception if your Honor please.

“The Court: Certainly.

“Mr. Gleason: At this time, if the Court please, simply to complete the record, we desire to have the original testimonials marked for identification.

“Q. To get a preliminary foundation, you have handed me, Mr. Colgrove, a file containing various papers. Did you prepare that file?

“A. No, sir; those letters were written by individuals.

“Q. I mean, did you put these into the file?

“A. Yes, sir.

“Q. What are they?

“A. Voluntary testimonial letters received from purchasers of Colusa Natural Oil products.

“Q. And you personally know that these are voluntary testimonials sent into the office?

“A. Yes, sir.”

Thereupon, Mr. Gleason offered these original testimonials in evidence.

“Mr. Zirpoli: Same objection; irrelevant and immaterial.

“The Court: Same ruling.

“Mr. Gleason: May they be marked, then, for identification?

“The Court: Let them be marked for identification.”

The proffered testimonials were then marked Defendants' Exhibit Q-1 for identification.

(Testimony of Chester Walker Colgrove.)

DEFENDANTS' EXHIBIT Q-1 FOR  
IDENTIFICATION

6-26-42

EXCERPTS FROM VOLUNTARY TESTI-  
MONIAL LETTERS FROM USERS OF  
COLUSA NATURAL OIL PRODUCTS

Mrs. M. Perry  
Phoenix, Arizona

October 20, 1941 "I can never say enough in favor of Colusa. It gives instant relief from itching and for me a perfect healing where the skin breaks out. When it was first brought to my attention I had a bad place on my right leg. Was in bed twice with a bad infection from scratching. The area was spreading and I had used untold remedies and spent so much. To say I was worried is putting it lightly. I was a nervous wreck. My leg had been bothering me for months and was getting worse all the time. Everything I used gave a little relief but the itching would become intolerable and I could see it would never heal with the ointments and what not I had been, and was using prescribed by doctors and recommended by friends. I believe I bought (if not the first) one of the first bottles of Colusa sold here, for I told the druggist to let me know when it came in. I was really desperate. You give a three day guarantee. Well, after the second day money couldn't have bought

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

that bottle. It gave instant relief. There was no skin left on that area of my leg and it was an extensive area. The oil was so soothing I was amazed that anything could feel so like nothing when applied, yet give such healing. Inside of two days it had stopped itching entirely and a thin skin was forming all over. Now you can see why I don't want to be without it. I still have little patches of breaking out but the Colusa fixes it up immediately. My leg, however, has never given me any more trouble—not even a scar forms. My son and son-in-law use it for athlete's-foot and find it unexcelled. I could go on telling you of people I have given a very little (for a little goes a long way) and they too sing its praises. Am so glad to hear you are going to advertise, for I have been so hopeful that more who suffer from skin ailments would find out about this most wonderful healer."

Eczema and Athlete's-Foot

Karl D. Pettit & Co.

20 Exchange Place

New York

April 22, 1942 "Several weeks ago I casually saw your advertisement in the newspaper and it impressed me as an intelligent appeal. Therefore, I got a bottle of your Colusa Natural Oil. Much to my amazement it completely cured a skin dis-



(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for

Identification—(Continued)

ease I have had for over three years. In 1939 I contracted a disease on my hands that was diagnosed as eczema, athlete's-foot and what have you. I went to the finest skin specialists in New York and have probably paid out several hundred dollars for X-ray treatments and just about every sort of salve or lotion the human mind could conceive. Not a single one of them cured my condition and then, out of the blue came Colusa. I feel it is my duty to tell you that I do feel very much indebted to you and if you have any "Doubting Thomases" in this New York district, just refer them to me."

Eczema and Athlete's-Foot

Bertha Eckhardt

22 West 68th St

New York

April 13, 1942 "Replying to your letter, I certainly can recommend the Colusa oil for eczema, as well as athlete's foot, as I have had personal experience with both. I, too, spent many years with skin specialists, under treatment for athlete's foot, and a number of times was confined to my home for several weeks because I could not wear shoes. The amazing thing to me about this Colusa oil is the short time it took to clear up my ailment, and the fact that the trouble did not recur, although it is now about four years since I used it for

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

athlete's foot, and I have gone through a number of hot summers, which is usually the worst period for that particular ailment. Also I have two friends who have had the same experience with eczema, and they tell me they have not had any trouble since using the oil. I still keep a bottle of the oil on hand, particularly in the kitchen, as I have found it excellent for burns. As for the capsules and other uses for the oil, I understand excellent results have been had, but since I have no first hand information on them I cannot give you anything definite—however, as for the ailments mentioned above the oil works like a charm.”

Psoriasis

Mrs. Maud Neece  
219 Roselawn Ave.  
Modesto, California

March 28, 1942 “My Psoriasis has been a very long standing case of seven years. I find my hands, foot and other parts of the body are looking so much better. The spots seem to be healing and drying up. I am taking three Colusa pills daily before meals. I have been to many and the very best doctors and skin specialists in the State. No kind of treatment has ever helped me. So I am so thrilled now to see what Colusa pills and oil is doing for my Psoriasis. Hope I shall soon be rid of it forever. A million thanks to you and Colusa Co.”

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

April 9, 1942 "I am the happiest and most grateful person in the world, for the grand results I am getting from Colusa Products. My doctor was shocked when he seen my hands and said we will now be able to help other poor people with Psoriasis."

#### Psoriasis

Clyde Shelton  
7018 Eastman St.  
San Diego, California

April 25, 1942 "I am sending you another order—for the capsules. I have used two bottles of the oil and am now using the third. I am really thrilled with results I have obtained so far, but you see I have Psoriasis on both my scalp and body."

#### Skin Trouble

Marvin Baker  
1270 So. Ogden St.  
Denver, Colorado

April 2, 1942 "Enclosed find \$5.00 in payment for one \$5.00 bottle of Colusa Natural Oil (4 ounces). Please rush this order. We have used nearly all the two-ounce bottle and think we can see distinct results and want to continue the treatment without interruption."

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

Skin Trouble

A. E. Grube

231 Louie Street

Lodi, California

April 6, 1942 "Enclosed find \$6.00 in payment for \$3.00 bottle of Colusa Natural Oil (2 ounces) and \$3.00 bottle of Colusa Natural Oil Capsules (100 capsules). Skin has cleared up very nice."

Eczema

Mrs. Frank Harris

225 Jefferson St.

Hoquiam, Washington

March 30, 1942 "I received your letter about your Colusa treatment, and must write and tell you. I went to my drug store, the Harbour Drug Co., and ask them if they keep Colusa Oil, and they did and I got me a \$3.00 bottle about two weeks ago. I have some kind of eczema, and I had it on my face and hands, but it sure was burning and itching. I could not sleep at times, but now after two weeks use of the Colusa oil my skin is drying and clearing up and I am going to keep using it until its all gone I hope, thanks to Colusa, and also the advertisement I noticed in my paper when I wrote you."

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

Eczema

Mrs. Naomi E. Ford  
2205 N. Fulton Ave.  
Baltimore, Maryland

April 23, 1942 "I have used your product and I have recommended this oil to address above. Your oil has practically cleared up a nasty case of eczema for me. Thanks to your product."

Skin Trouble

Mrs. Augusta Storm  
15 Park Street  
Norwood, Mass.

April 20, 1942 "I want to tell you how much I appreciate your Colusa Products. My hands were in a very bad condition and had been so for almost seven years. I have tried so many kinds of ointments and doctors too, but nothing seemed to help. But, thanks to Colusa Oil and capsules my hands got better in a short time, and now I will always have Colusa Products in my home."

Hemorrhoids or Piles

Mrs. J. C. Erkman  
2226 W. 4th Street  
Duluth, Minn.

April 22, 1942 "Could you tell me if I would be able to get any of the Colusa Natural Oil Hemorrhoid Ointment. I was sent a tube by a friend

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

in Los Angeles and find it the most beneficial product I've ever used. I would be so glad to know if it is still in the market and where I would be able to obtain it. Hoping to hear from you very soon."

Stomach Trouble

Nellie Robinson  
466 Seabright Ave.  
Santa Cruz, California

April 5, 1942 "I am so happy over all I don't know just what to say. Before I saw your ad in my morning paper I have prayed to God to lead me to his own remedy. \* \* \* Before I got the oil and capsules I took baking soda two and three times a day. Now I eat what I want and don't need soda thanks to Colusa Products."

Psoriasis

Mrs. Hazel V. Noll  
Richland  
Pennsylvania

April 14, 1942 "I just want to let you know that it is one month now that I am using your Colusa oil and capsules—I can see a big change already. All these years I have been told by different doctors that Psoriasis could not be cured, well I have tried the oil and capsules and see for myself what it is doing for me. I have used half of my

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

order and I think it is doing wonders for me. My legs were so bad that I couldn't wear silk hose. I will never be without Colusa oil and capsules as long as I can afford to get them. I shall always remain a friend and user of Colusa Products."

Leg Ulcer

Mrs. Jas. H. Horan  
Redding, California

April 27, 1942 "Please find enclosed money order for \$6.00 for which send me oil and capsules. It is sure good stuff—my leg was awful bad. It is healing pretty fast. Another little place broke out on my other leg. I guess it is the oil bringing out the poison. I put it on morning and night. Please send as quick as possible."

Skin Trouble

Mrs. O. C. Beckenhauer  
107 North 9th Street  
Norfolk, Nebraska

April 9, 1942 "Will you please send C.O.D. your \$3.00 bottle of oil and \$3.00 bottle of capsules as soon as possible. The medicine has been doing me a lot of good."

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

Eczema

Art Roberts  
3525 Nevada Street  
Fresno, California

March 30, 1942 "Enclosed find \$3.00 in payment for \$3.00 bottle of Colusa Natural Oil (2 ounces). If improvement continues with the use of this next bottle I should be completely cured of my eczema."

Eczema

Louis Pilivet  
Lankershim Hotel  
San Francisco, California

March 28, 1942 "Find money-order for three dollars (\$3.00) for another bottle of Colusa Oil. I am very much better. I know it is helping me a lot."

Leg Ulcer

William G. Wharett  
1242 20th Avenue  
San Francisco, California

April 2, 1942 "Will you be so good and send me one bottle of oil. Enclosed please find check—please send it early as possible. I am getting along fairly good. The ulcers are closing up slowly and I must state that I am greatly pleased with your wonderful product."



(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

Psoriasis

Gladys Jackson

119 Hancock Street

Rock Springs, Wyoming

April 25, 1942 "Enclosed please find money order for \$10.00 for which will you please send me: one \$5.00 bottle of Colusa Natural Oil and one \$5.00 bottle of Colusa Natural Oil Capsules. Mine is a very stubborn case of Psoriasis, but is responding most satisfactorily to treatment with your Colusa products; and I'm indeed grateful for Colusa oil and capsules."

Skin Trouble

Mrs. Martha M. Thompson

Grand Rapids, Michigan

March 30, 1942 "I have received so much help already—it has removed all these oogley scales I call them and stopped that terrible itching that almost runs one crazy. \* \* \* We have paid out a thousand dollars doctoring and this has helped me more in the length of time I have used it than everything I ever used. No wonder I thank you so much and I feel that at last I have found something that will give me a little comfort."

(Testimony of Chester Walker Colgrove.)  
Defendants' Exhibit Q-1 for  
Identification—(Continued)

Ira R. Morrison

Box 773

Chico, California

April 26, 1942 "I have been using Colusa Oil for a skin eruption for about ten days now \* \* \* It has helped me more than anything else I have used."

Mrs. C. W. Rigg

1009 So. 11th St.

Kelso, Washington

April 16, 1942 "I am sending for a bottle of Colusa Natural Oil, price \$3.00—it has helped me so much. \* \* \* I have quite a few tablets yet will send for more. \* \* \* Thanking you for the good it has done me."

Ed. Santa Cruz

503 Brokerick St.

San Francisco, California

April 4, 1942 "After three days of using Colusa oil I'm rapidly improving. Please send me C.O.D. a 2-ounce bottle of oil."

April 15, 1942 "Enclosed find \$5.00 money order in payment for \$5.00 bottle of Colusa Natural Oil (4 ounces). I know now that I am on my way to a complete recovery—thanks to Colusa oil and capsules. You will hear from me in the near future."

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

George Sullivan

R #1 Box 107

Bangor, Pennsylvania

April 16, 1942 "Please send the above item (\$5.00 bottle of Colusa Natural Oil) C.O.D. by air mail as I need it bad for my little boy as the others helped him wonderously already."

Mr. Joe Wallace

123 South "E" St.

Livingston, Montana

April 2, 1942 "Please send C.O.D. one \$3.00 bottle of capsules. Would like you to know I am on my second bottle of oil, and just finishing up on the first bottle of capsules. I am not entirely cured but am able to be back at work. The oil is the only thing that I have tried that has helped me."

Mrs. E. Rasmussen

421 "A" St. NE

Washington, D. C.

April 11, 1942 "I have used Colusa for seven days and wish to express my sincerest appreciation for it. It worked like a miracle on my skin—all the red rough skin disappeared in three days. \* \* \* I see many people here with bad skin and wish all of them could use Colusa."

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

Chas. Hamilton

1856 So. Jackson St.

Frankfort, Indiana

April 16, 1942 "I am enclosing \$3.00 for a two ounce bottle of Colusa Oil. I will soon have my first I got used up and I don't want to get out of it. It has surely done the work. I have been bothered with breaking out on my legs for over a year and have doctored and tried several different remedies. They would help but they wouldn't stop the burning irritation till I got your treatment. I feel I have got relief at last but I want to keep a bottle on hand. My wife tried it on a burn she got on her arm and it worked fine—it never blistered or got sore. So I am well pleased with it. I have been getting more sleep since using it than I did before and that is worth a lot to me."

Mr. T. A. Abess

1002 East 27th St.

Houston, Texas

April 17th, 1942 "Please send me a \$3.00 bottle of the Natural Oil only and send C.O.D. on delivery and send it quick as possible as the second treatment seems to help a lot. That's why we want more at once."

(Testimony of Chester Walker Colgrove.)  
Defendants' Exhibit Q-1 for  
Identification—(Continued)

Athlete's-Foot

Joseph J. Barry

West Coast Studios—Warner Bros.  
Burbank, California

April 11, 1942 "I have been using your marvelous oil for an infection on *on* my hands which has been described by doctors as athlete's foot and ring worm, and it is doing a marvelous job—better than anything I have used yet. I have had this infection for almost a year now and have tried various things prescribed by the doctors but none have done much good."

Skin Trouble

G. Espelond

San Francisco, California

April 15, 1942 "I have used up the Colusa Natural Oil and it surely has done wonders."

Mrs. Helen C. Weiler

Room 725 South Pacific Bldg.  
San Francisco, California

April 14, 1942 "Enclosed find \$6.18 in payment for one \$3.00 bottle of Colusa Natural Oil (2 ounces) and one \$3.00 bottle of Colusa Natural Oil Capsules (100 capsules). Have tried everything. Even gone to the best doctors in the city. No result.

(Testimony of Chester Walker Colgrove.)  
Defendants' Exhibit Q-1 for  
Identification—(Continued)

This May Do the Work. (face breaks out and bleeds dreadfully.”

April 22, 1942 “I have tried everything on God's earth, but Colusa Oil beats anything I have tried.”

Otto Rosel, Druggist  
Grafton, Iowa

May 27, 1941 “A month or so ago after shaving I acquired a bad itch and could do nothing with it. It was so bad I expected a *diege* of several weeks or months, when along came your Colusa Oil, and in three days I was cured, and had relief at once.”

#### Eczema

Mrs. Hardin  
Richmond, Va.

Nov. 25, 1940 (letter to Clark Pharmacy, 1701 W. Adams St., Los Angeles, California) “I was in your store one day before coming here on a visit, and bought a bottle of Colusa Natural Oil for Weeping Eczema, and I was relieved in a short while. I hardly know how to express my appreciation for such a remarkable remedy. Before using Colusa Natural Oil I had tried various ointments recommended for Eczema but I had found so little relief.”

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

Insect Bite

Dr. R. O. Lilyquist

Story Building

Los Angeles, California

January 2, 1940 "I used the natural oil on my legs where I had some sores caused by some grass ticks and just one application cleared it all up, and I've tried most everything for over a year."

Eczema

F. O. Burckhardt

Hotel Mayflower

Seattle, Washington

July 19, 1940 "I am just as much sold on the oil as I ever was and beg to give you an example of what it did for a woman in the past few days. On Sunday night she called me at my room, or rather Monday night, and asked me if I had any more of that wonderful oil that she had heard of. Said she was in the lobby and wanted to talk to me, so I asked her up. I happened to have a doctor visiting me at the time and he told me not to have anything to do with it, as he was sure it could do her no good and might get me into complications. However, she came on up and she had on white cotton gloves to hide the eruptions on her hands and in addition she had the same thing on her chest and arms. Said she had been doctoring but the thing

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

kept getting worse and spreading. I did have a very small vial of the oil, which I gave her with instructions as to its application. Just a few minutes ago she called me on the phone and said she was practically cured but was out of oil, so I called a friend who had a little left which I will give her to-night. If you ever heard a grateful woman talk over the phone you should have heard her and I am thankful that I had something to do with giving her this happiness. Surely a product of that sort should not be taken away from suffering humanity. So please write me and tell me what's what."

Skin Trouble

George S. Allan  
16 Sutton Place  
New York City, N. Y.

January 12, 1942 "Will you please send me C.O.D. one 2 fluid ounce bottle of your Colusa Natural Oil. After endless treatments from several skin specialists I have found that Colusa is the only ointment that aids the particular skin disease I have."

Eczema

Mrs. H. Schaer  
1321 Toulumne St.  
Vallejo, California

June 18, 1942 "Would like to have you send me a large bottle of Colusa Oil, C.O.D. Have been using



(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

it on my baby to clear eczema and one bottle helped so much I want another.”

#### Stomach Trouble

Mr. Harold Clark  
725 W. Michigan Ave.  
Ypsilante, Michigan

April 26, 1940 “I was talking to a friend of mine the other day, who told me he was taking your oil for ulcers. I have a deuodenal ulcer and have taken your oil and I feel that it has helped me. I would like a three dollar order of it sent. I have had my ulcer about four years now.”

#### Psoriasis

Mrs. H. L. Turner  
2849 NE Ulysses St.  
Minneapolis, Minn.

April 18, 1940 “It is now six weeks since I received your bottle of oil and I feel I have given it a fair trial with very satisfactory results. Through a friend of mine residing in Los Angeles and a friend of hers who seems to have the same skin ailment I have which is psoriasis and she tried this oil and for two years hasn't had a recurrence of it. My friend thought I must try it so she had it sent to me.”

(Testimony of Chester Walker Colgrove.)  
Defendants' Exhibit Q-1 for  
Identification—(Continued)

### Stomach Trouble

Warren M. Owen  
Brooklyn, Washington  
% Saginaw Camp

May 6, 1940 "Enclosed find a P.O. order for which I would like another bottle of capsules of Colusa Natural Oil. My sister, Lola O. Foster sent me a bottle and I think it helped me. So want to try another bottle. Have stomach trouble. I can eat better anyway and gained two lbs. Thanking you in advance, I am——"

### Stomach Trouble

William T. Wolsey  
504 St. John Street

Ypsilanti, Michigan "I have been troubled with stomach trouble for years—and later years have had to doctor for it all the time. This winter Mr. G. S. Felknor gave me a bottle of pills on trial. I am on my second bottle and haven't had a doctor since. Would like to have you send me two bottles of pills and one bottle of oil C.O.D."

### Hemorrhoids or Piles

Frances H. Ott  
420 So. Serrano Ave.  
Los Angeles, California

June 20, 1940 "I received the tube of Colusa

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

hemorrhoid ointment and find it very healing.  
Thank you so much.”

Skin Trouble

Georgia L. Williams

Buena Park, California

April 18, 1940 “I do want to tell you what relief  
I got from the oil. I had a place on my body for  
three years. I had tried everything to get rid of it  
—it would break out and itch till it would almost  
run me crazy. After using your oil a while it has  
gone. I am very thankful for the Colusa Natural  
Oil Products.”

R. J. Jackman

Rock River, Wyoming

March 17, 1942 “Please find enclosed \$5.00 for  
another bottle of Colusa Oil—4 oz. size. I am having  
good luck with the oil. Believe it will clear up my  
skin.”

Mrs. O. F. Burnett

Orchard, Colorado

March 15, 1942 “I used the capsules and oil as  
directed and my arms are cleared up.”

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

### Hemorrhoids or Piles and Ringworm

Edgar E. Lasson

Fairview, Utah

March 17, 1942 "I am unable to buy more Natural Oil Hemorrhoid Ointment around here; would like to have you send me 2 or 3 little bottles C.O.D. I can't see why our drug store doesn't handle it, because it is the only thing that will give me relief. I also cured a ringworm on my little girl. It's the best household ointment I have ever used."

### Cement Poisoning

John Raun

1109 9th Ave., So.

Great Falls, Montana "I should like for you to send me another \$3.00 bottle of Colusa Oil. I had a case of cement poisoning and if I am not mistaken I am getting over same, anyhow I have improved a lot. Find enclosed \$3.00 money order."

### Skin Trouble

C. E. Huson

475 24th Ave.

San Francisco, California

February 4, 1942 "Enclosed is check for \$3.00 for which please send jar of Colusa Natural Oil. It is a pleasure to report that your product has produced a marked change for the better."

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

Stomach Trouble

Virley M. Lamb  
Rector, Arkansas

October 31, 1941 "Your Colusa Natural Oil is helping my stomach wonderfully and I am asking you to send me another bottle with 100 capsules in it. I am advertising it to every stomach trouble person. Please send it to me at once."

Eczema

Fred W. Niles  
964½ W. 43rd St.  
Los Angeles, California

March 2, 1942 "I got a bottle of your Colusa Natural Oil from a druggist here for eczema. It helped so much that I would like another bottle but am unable to get it in any drug store here. I would like information as to where I can obtain another bottle or if I can order it direct."

Stomach Trouble

J. P. Rankin  
Box 164  
Chewelah, Washington

March 12, 1942 "I have been taking the oil capsules since I got them and they seem to be doing the business for me. I gave forty-five of them away to other people who had stomach trouble. Now I have only seven left. Please send me 100 capsules

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

and I will send you the money in a few days. Trusting you will do this and send me more booklets. Quite a few coming in to see me have stomach trouble—I think that you will sell a lot of oil and capsules here before long.”

Eczema

Mrs. E. I. Macy

1920 Mission St.

So. Pasadena, California

September 30, 1941 “Kindly let me know where I can get Colusa Oil for my hands—have used it for eczema and it is the only thing that has helped. Can you send me a bottle—I will appreciate it very much if you can let me know where I can get it.”

Eczema

Mr. George Swenson

8717 Bandera Street

Los Angeles, California

September 30, 1941 “I have been unable to purchase any more of your Oil products, and I am wondering if you could send me a \$3.00 bottle C.O.D. I would appreciate it so much as it is the only medicine that has ever helped my eczema. Please let me hear from you.”

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

Leg Ulcer

C. G. Walters

1307 W. 47th St.

Los Angeles, California

March 31, 1942 "Wish to report for this month that my leg ulcer is gradually getting better with your oil treatment and hope soon to be able to get to work."

Leg Ulcer and Face Rash

Olive Fischer

20891½ El Sereno

Altadena, California

August 1, 1940 "I was waiting to write to thank you for the bottle of oil until I could find out the lady's name who gave me the oil, but she is away on a case—I know she is a nurse and lives on N. Fair Oaks. \* \* \* My leg was getting all red again as I was out of the oil and I was so thankful when it came on Saturday. I started right in using it and my leg is getting on just fine. It is so good to get something that really heals it. The breaking out on my face is nearly gone—and I have tried so many things the doctors ordered, also things I tried myself, and nothing would heal it, but the oil just took fine for which I praise the Lord. I do want you to know I am thankful for the oil and how it has helped me."

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

Scalp

Lucille C. Seifert

1150 West 29th St.

Los Angeles, California

February 25, 1940 "When I last talked with you I told you that I was anxious to see whether a scalp irritation which a friend of mine had suffered with for four years could be cleared up with Colusa Oil. It did the work in four applications. \* \* \* He is so grateful as he had tried many so-called cures without results. You may be sure I'm giving the oil plenty of advertising wherever I go."

Leg Ulcer

Miss Esther Tuomala

1216 N. Harper Ave.

Hollywood, California

February 27, 1940 "I tried some of your natural Colusa oil for the ulcer on my leg. I am still using it and must say it proved most wonderful—surpassing any of the medicines doctors have used in my case."

April 19, 1940 "After my leg has healed I feel that I could very well say I have a good friend, Mr. Colgrove. Your product was marvelous. Now, I am back to work as masseuse in Hollywood. It will be a tough grind with those terrific doctor bills. Many people have been astonished because my leg ulcer finally healed."



(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

Skin Trouble

Mrs. Dorothy D. Shelby

148 E. 51st Street

Los Angeles, California

March 7, 1940 "Received your bottle of Natural oil Tuesday—see some results already. Enclose find money order and please send me another bottle."

Skin Trouble

Mrs. Louise Donnel

3308 Descauso Drive

Los Angeles, California

October 10, 1940 "Will you kindly send me the address of your "Sales firm" in L. A. or Hollywood immediately and oblige? I have used your "natural oil"—given me by a friend and found it helpful so would like to know where to buy it."

Mrs. Harold Berglund

Klamath Falls, Ore.

October 27, 1942 "Please send me a bottle of Colusa Natural Oil. A lady gave me a bottle to tryout. It helps my hands and my bottle is nearly all gone. So I am sending for more. Please send it C.O.D. special delivery."

(Testimony of Chester Walker Colgrove.)  
Defendants' Exhibit Q-1 for  
Identification—(Continued)

Eczema On Baby

Mrs. Hatsil D. Delano  
4746 NE 104th St.  
Portland, Oregon

October 14, 1941 "Our physician, Dr. F. T. Maguire, 3530 SE Hawthorne Blvd., Portland, Oregon, recommended Colusa Natural Oil for eczema and gave me a sample bottle to try on our son's face. He is six months old and has had it on his face since he was about three weeks and this oil is the only thing that has helped him. I would appreciate it if you would send me by return mail a two-ounce bottle C.O.D.

Hemorrhoids or Piles

Eczema

Mrs. A. J. Chevalier  
R #5 Box 169  
Tampa, Florida

August 28, 1940 "Enclosed please find payment for one bottle (or tube) of Colusa Hemorrhoid Ointment. My aunt has used your Natural oil in treatment of her hands. It cured her completely. Whereas she had tried other medicines and many doctors. But they were unable to cure her. Her trouble was eczema."

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

Eczema

Mrs. John Del Margo  
316 E. 7th Street  
Trinidad, Colorado

September 16, 1941 "I spent hundreds of dollars for my daughters, \* \* \* and really until I came upon your Colusa Capsules and Oil there has not been anything that really helped them. They had eczema so bad that one of them looked just like that picture of those hands that you advertise with your products. After taking your oil one year ago this last August was the first time in three years that child was able to go through the school season. The moment they stop using it I can tell right away."

Eczema

Katherine S. Wheeler  
602 East Lake Avenue  
Watsonville, California

July 18, 1941 "*Hile* on a trip through Oregon and Washington I recently purchased a bottle of your "Colusa Natural Oil" at the Rexall Drug Store in Salem, Oregon, to treat a stubborn case of eczema on my hands. In less than a week the eruptions have very largely cleared up—and I wish now to get a bottle of the capsules for internal treatment. I have been unable to find your prod-

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

ucts at any local drug stores and would greatly appreciate it if you would mail me one bottle of the capsules, C.O.D., at the address given above."

Eczema

G. A. Ruana  
New Leipzig  
North Dakota

December 10, 1941 "Due to the fact that none of your produce is handled in our drug store here, and as the last time I purchased your product was in San Diego, California, I would appreciate it if you will send me two bottles of (Natural Unrefined Petroleum Oil) capsules, which contain sulphonated hydrocarbons. You may send these C.O.D. I have been bothered with eczema for a number of years and it generally shows up when winter comes. But since using one bottle of your capsules it shows very little. I still have nearly a full bottle of the oil I am using externally."

Eczema

Mrs. Henry Mensing  
2134½ Vallego Street  
Los Angeles, California

October 10, 1941 "Would you please let me know if I could possible get some of your natural oil containing sulphonated hydrocarbons? I have a severe case of eczema and that is the only remedy that gives relief, in fact, a very small amount which

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for

Identification—(Continued)

was given me while on a trip to Minneapolis has almost cured it. So please let me know at once if I can get it, also the price. Have been unable to get it here in L.A.”

Eczema

Mrs. B. E. Mathews

915 Quincy Street

Rapid City, South Dakota

December 29, 1941 “I have a son that has a severe case of eczema. A friend of mine told me that your product, Colusa Natural Oil, cured her sister of eczema. So I would like to try it on our son. Would you please send me a jar of it at once.”

Mrs. Felicia D. Gonzales

R #1 Box 448-A

Santa Paula, California

January 3rd, 1942 “I have been trying to get this natural oil for more than two months. I went to Santa Paula and at the Caugh's Drug Store they told me they were going to get it for me. Later on I came in and they said they didn't order it. Try to get it at Seeber's Drug Store at Sta. Paula and they didn't have any. I went to Ventura Rexall Drug Store and they got my order in order to be sure I could get it. I ordered the Natural Oil and a small bottle of Hemorrhoid Ointment.

(Testimony of Chester Walker Colgrove.)  
Defendants' Exhibit Q-1 for  
Identification—(Continued)

One week later I made special trip to get it and they said they were sorry the natural Oil was already sold, but I got the ointment. So they wanted to get my order for the second time. I told them I had no car and had to pay to ride. Decided to order it from you. Please rush this order, thank you."

Skin Trouble

H. D. Brown

Briarden Ranch

Paso Robles, California "Enclosed find \$3.00 in payment for one \$3.00 bottle of Colusa Natural Oil (2 ounces). So far the oil has proved a great benefit to me."

Mrs. Paul Vigg

706 N. Spring Street

Compton, California

April 29, 1942 "In the past five months I have been unable to secure your Colusa Oil anywhere. I have tried everywhere. Would you please write me and let me know where I would be able to get it, or if I could buy it directly from you. Thanking you in advance for a quick reply."

Susan Hynd

1333 Pearl Street

Denver, Colorado

April 27, 1942 "Enclosed find \$5.00 in payment for a 4 oz. bottle of Colusa Natural Oil. Your other

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

medicine I sent for last week has helped me so much I am sending for some more so I will not run out of it. My limbs and hands are so much better.”

Petra Gancin

Rosebud, Texas

April 27, 1942 “I received your regular six dollar box of Colusa products on April 18th and I started taking the capsules and rubbing the oil on my face the next day; up to the date I have found a great relief, and I had not written back because I wanted to see the effect they were to have on me. I can say that I am very pleased.”

Jessie Little

418 Floral Park Terrace

So. Pasadena, California

April 28, 1942 “I had your letter about a month ago and would have answered sooner but thought I'd wait and be sure that the healing of my sore leg would be sure. At first I thought the trouble was going to spread but now I am sure there is to be a clean up. I thought of sending the capsules back but changed my mind and I'm taking them always once a day and believe they help otherwise.”

(Testimony of Chester Walker Colgrove.)  
Defendants' Exhibit Q-1 for  
Identification—(Continued)

William E. Kirby  
Maripulli, Ohio

May 4, 1942 "Find enclosed \$5.00 to pay for a bottle of Colusa Oil. I have had wonderful results with one bottle of oil and one of capsules. I am sending one name to you. He won't know who sent it but I hope he will get treatments."

Mr. Joe Wallace  
123 South "E" Street  
Livingston, Montana

May 3, 1942 "Please send one 2 oz. bottle of Colusa Natural oil C.O.D. My hands still break out a little, but are better now than ever before since they started to get bad. I'm sure if it wasn't for the oil I wouldn't be able to work."

Evelyn Costello  
948 York Street  
San Francisco, California

May 6, 1942 "Will you please send me another bottle (\$3.00) size of the Colusa Oil, C.O.D. In the two weeks I've been using your products, I have seen astonishing results and am very grateful for having found out about it."



(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

Mrs. Brenton

Hanford, California

April 27, 1942 "Please send me the 100 capsules. Enclosed you will find my personal check. I am much improved, and thanks to you."

Mrs. C. E. Barker

R #1 Box 791

Grants Pass, Oregon "Enclosed find \$3.00 in payment for one \$3.00 bottle of Colusa Natural Oil Capsules (100 capsules). Although the medium has not cured me yet, I feel sure I am making good progress and would like another bottle of capsules."

Minnie E. Patten

3640 53rd Street

Sacramento, California "Enclosed find \$6.00 in payment for one \$3.00 bottle of Colusa Natural Oil (2 ounces) and one \$3.00 bottle of Colusa Natural Oil Capsules (100 capsules). I have used the supply I ordered. I haven't any itching or burning since using it. My skin is much nicer."

#### Hemorrhoids or Piles

Norine Short

1234 19th St. NW

Washington, D. C.

April 9, 1942 "I received the order which I sent you, and am very pleased with the results. En-

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for

Identification—(Continued)

closed find order for one \$3.00 tube of hemorrhoid ointment, which I would like to get as quickly as possible.”

### Stomach Trouble and Piles

Mrs. Melissa Jeter

926 Burton Street

Charlotte, No. Carolina

May 18, 1942 “I just want to thank you so much for your treatment. It sure have did my husband so much good he can sleep at night now—and don't have any trouble with it and he told a friend just what it has done for him and she has stomach ulcers and piles so I am ordering this for her. It did him so much good and she wants to try it too do you send it by C.O.D. please and I will pay the postmaster when it get here. With much oblige, Respectly your—send it as soon as you can.”

### Eczema

Mrs. L. C. Reeves

Rossville, Ga. R #3

May 18, 1942 “I'm greatly pleased with your Colusa Natural Oil. For over 15 years I've been bothered with what was pronounced eczema. I was tortured day and night with itching. I had tried everything I heard of but nothing seemed to help me more than a few days at a time. The doctor's pronounced it incurable, but three weeks ago

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

I got a bottle of Colusa Natural Oil and Colusa capsules, and after a few days treatment the itching stopped and now they seem to be almost well. I think one more 2 oz. bottle Colusa Oil will do the job. I'm sending \$3.00 for a 2 oz. bottle. Please send as soon as possible as I don't want to get out. You may use this letter if it will help anyone that is suffering as I was. I praise your oil wherever I go."

Skin Trouble

Mrs. C. Pollack  
25 Stratford Park  
Rochester, N. Y.

May 17, 1942 "I have been using the oil for two weeks now, at the time I sent for it I could not use my hands, today they are almost well. I can not say enough for your product and will sure pass it along to everyone I know that is suffering as I was."

Leg Sores

Steve Buckrom  
R #2 Point Pleasant  
Washington

May 19, 1942 "I just can't find words to express my praise of this wonderful Oil and Capsules, as I had spent hundreds of dollars and no success as my leg just kept breaking out and itching; but with

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

this first \$6.00 treatment all itching gone and healed entirely up. So I'm wondering if I may order another bottle for I don't ever want to be without this wonderful Colusa Oil."

Face Rash

Pauline Erhart

1836 Outpost Drive

Hollywood, California

May 19, 1942 "As you wrote me such a personal letter and have sent me this jar of Colusa ointment, I think I should tell you about the result. For over 4 months I had a terrible rash in my face and all the doctor's treatments didn't bring any relief. And now, after having used Colusa oil for 6 days, my face is almost normal again. All my friends think there must be a miracle. I certainly recommend Colusa very highly."

Mrs. Fred Niemann

R #1 Box 53

Marshfield, Wisconsin

May 18, 1942 "At this writing I will let you know I've used about 1/3 of the oil, of course I diluted it with olive oil and the capsules I took not quite as strong as it says on the bottle, but I can say it sure helped me. I've only used 1/3 of the treatment so far and I am all cleared up. Thanks for the hemorrhoid ointment—it helps a lot. Now

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

that the remedies helped me, I plan on getting my sister to try it also.”

### Psoriasis

Mr. and Mrs. Robert Crawford  
903 Wodsworth Street  
Traverse City, Michigan

May 18, 1942 “A few weeks ago I ordered from you Colusa oil and capsules for my husband who has been bothered with psoriasis for 10 years or more, today he is almost cured. He cannot say enough in words, he says, to thank you and your medicines.”

### Skin Trouble

Alvin Burk  
1724½ Euclid Ave.  
Santa Monica, California “The Colusa you sent me is working wonders the oil and capsules too, my hand is a 100% better, and I have had this on my hand now for about 8 years and have tried just about everything in the books, and all time it kept spreading, instead of any improving, but since you was so kind to send me this miracle product my hand is on the road to complete cure, and I sure appreciate you doing what you did for me and thank you very much. They may use this statement if they wish.”

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

H. E. Hunter

430 Jerome Street

San Jose, California

May 18, 1942 "Kindly send me the Colusa Natural Oil and the capsules. Your products was recommended to me by Mrs. Lydell, 1068 Bird Ave., San Jose. She has been wonderfully benefited by your treatment."

Stomach Trouble

Miss Dolores McDonald

336 North 4th Street

San Jose, California

May 20, 1942 "Enclosed find \$5.00 for bottle of capsules as I now can eat almost everything I want, but felt I should take another bottle. My brother has bleeding hemorrhoids—would like to have you let us hear more about your hemorrhoid ointment, please. Thank you for your past kindness to me."

Skin Trouble

Frances Willard

143 N. Van Ness Ave.

Los Angeles, California

May 19, 1942 "Enclosed find \$6.00 in payment for one \$3.00 bottle of Colusa Natural Oil (2 ounces) and one \$3.00 bottle of Colusa Natural Oil Capsules (100 capsules). I have found the Natural oil and capsules very satisfactory. My skin

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for

Identification—(Continued)

is clearing up nicely and no more itching. Have used up my oil.”

Psoriasis

Pvt. Maurice Mortimer

A. S. N. 36213994

Co. A. 58th QM Regt.

A. P. O. 309, Tacoma Washington

May 16, 1942 “I received an order of Colusa oil and capsules about a month ago, and wish to say I have received astonishing results. I am troubled with psoriasis, but my skin is now spotless and I can not praise Colusa Products too highly. I still have some oil and capsules left, but will be ordering some more in about three weeks as I wouldn't be without it.”

Psoriasis

W. C. McAhren

1705 Isabella Street

Sioux City, Iowa

March 22, 1942 “Enclosed please find money for which please send a supply of your Colusa Oil Capsules and Oil. I wish this to be the same as you sent me a few weeks back \* \* \* I am glad to report that this combination has been of great benefit to me. I have had a chronic case of psoriasis for over 12 years and nothing to date has been of any benefit. Your medication has been of help and if the

(Testimony of Chester Walker Colgrove.)  
Defendants' Exhibit Q-1 for  
Identification—(Continued)

condition continues to improve I feel that it will  
'be completely cured in another month.'

Skin Trouble

Geo. C. Johnson  
4136 Randolph Street  
San Diego, California

May 18, 1942 "Enclosed find \$5.00 in payment  
for one \$5.00 bottle of Colusa Natural Oil (4  
ounces). I believe your medicine is going to work  
wonders."

Eczema

Albert Herzenberg  
6233 Wilshire Blvd.  
Los Angeles, California

May 16, 1942 "Enclosed find \$3.00 in payment  
for one \$3.00 bottle of Colusa Natural Oil (2  
ounces). Received very good results and relief  
from itching in my case of long-standing eczema,  
still have some capsules left."

Mr. John Gustafson  
392 Alameda Avenue  
Astoria, Oregon

May 15, 1942 "Your cure for eczema was re-  
commended by Mr. Camilla. He praised "Colusa"  
very highly, and said just a few treatments have  
given him great help. Please send me a bottle of  
capsules (100) and two-ounce bottle of Colusa Oil."



(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

Skin Trouble

Doris Hibbs  
3323 Arbor Street  
Omaha, Nebraska

May 12, 1942 "Your medicine—a Natural Un-refined Petroleum Oil, containing sulphonated hydrocarbons, Colusa Products Co.—is not available in Omaha. It is the only thing that will take care of my one hand and my supply is practically nil. Will you please send a medium sized bottle of same C.O.D. Time is important."

V. Rogers  
P.P. Box 176  
Atwater, California

May 13, 1942 "My wife used a bottle of \$3.00 oil for rubbing on her legs and she said you sent a bottle of tablet and she took and it help her and for her sleep. She could not sleep before and it keep her legs warm so she has been talking to me about it so much I decide to try it."

Eczema

E. Clayton  
1827 Johnson Avenue  
San Luis Obispo, California

May 15, 1942 "Enclosed find \$3.00 in payment for one \$3.00 bottle of Colusa Natural Oil Capsules (100 capsules). Best I have ever used—tried

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

everything from trees to weeds for eczema and this is the only thing."

Psoriasis

John Bush

General Delivery

Newman, California

May 15, 1942 "Received all of your mail today—if you will look in your files of March 13th you will see that. I have been using Colusa Oil and capsules. I was bothered with Psoriasis, not as bad as some people, but bad enough. I used everything anybody told me about until I saw your ad. I must say that Colusa Oil is all that they say, as soon as I started to use the oil the itch stopped and the skin is just as white as the rest of the body, now. I have some of the oil left yet, but I am sending for a bottle of capsules as I think they are the best tonic I ever had. I don't think the Psoriasis will ever come back."

Skin Trouble

C. R. Manuel

May 11, 1942 "I have been waiting to see how the oil would work on me but it is vanishing daily and it has the appearance that it will cure me—it has not been doing so well on my face and neck but I diluted a little last night with olive oil and it healed over night."

(Testimony of Chester Walker Colgrove.)  
Defendants' Exhibit Q-1 for  
Identification—(Continued)

Scalp Trouble

Nellie Robinson  
Santa Cruz, California

May 14, 1942 "I thank God and the Colusa Co. for it has done a wonderful thing for me. My scalp is as clean and no sign of it coming back. For 20 years I had indigestion but not since I am taking your capsules."

Skin Trouble

Cecil Hannah  
c/o Adjutant General's Dept.  
Topeka, Kansas

May 7, 1942 "My son's face has shown a marked improvement and I believe it will cure him entirely but will reserve my remarks until sure. However, will say that it has done something that nothing else I have given him or treated him with has done and I am really pleased with the results. Also I felt that the medicine was rather expensive but find after using that due to the spreading qualities of the oil it is very inexpensive compared with the price of the different things I have used in the past without any results."

Psoriasis

Lilly V. Johnson  
Patterson, California

May 12, 1942 "Enclosed please find my check

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for

Identification—(Continued)

for three dollars for which please send a bottle of your pills to Mrs. V. Lydell, 1068 Bird Ave., San Jose, California. At the time we first ordered your pills and oil in February, Mrs. Lydell was entirely covered with psoriasis. Now she is nearly cleared up; in face, the spots covering her scalp have disappeared without the application of oil. Do you wonder that we are grateful to you for this almost miraculous relief."

#### Acne

Mrs. Clyde Shelton  
7018 Eastman Street  
San Diego, California

May 12, 1942 "Some few days ago I received the jar of ointment that you sent along with my husband's order of capsules, for my acne on my face. I am delighted with the benefits I have derived from the use of it and the oil. I appreciate your sending it along very much. I have been bothered with this acne condition for about 8 years and this is the only thing that I have found to help a lot. I am taking one capsule each day. Yesterday I saw a lady, or rather a girl down town whose face was the worst I have seen—they were just piled up on her forehead and cheeks. I told her about Colusa Oil and took her name and address so you can write her and if it isn't asking too much give her the treatment suggestions. I'm sure she would

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

appreciate it. I told her I was confident if she would use the oil faithfully it would cure her. Her mother told me she had been to the Dr. and hospital day after day but hadn't been helped. I'm going to write her and tell her exactly how I have treated mine. I use a pack every other day in my treatment to draw out the impurities that are deep in my skin. Send her all the information you can as soon as possible, will you please."

Skin Trouble

J. Little

418 Floral Park Terrace

So. Pasadena, California

May 9, 1942 "It is about three weeks or a month since I got some Colusa Oil and Capsules. I have used the oil every day and it has certainly cleaned up my skin and I believe that in a day or two there won't be a spot left. I am going to tell everyone I know about Colusa Oil. May God bless your good work."

Frank Kamula

Box 133

Astoria, Oregon

May 9, 1942 "Enclosed find \$5.00. Please send me one four-oz. bottle of Colusa Oil. The medicine is improving my trouble nicely and I am well pleased. Please rush the order."

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

Telegram from Frank Kamula on May 11, 1942  
“Send order of my medicine by air mail immediately”.

Eczema

Elmer J. Meyer  
4043 Perrysville Ave.  
NS Pittsburgh, Pennsylvania

May 5, 1942 “I received my order of Colusa Natural Oil and Capsules on April 25th in good condition. I began using it on the following day for my eczema hands that I have suffered with for almost 2 years, after trying everything. I received relief in 2 days and in 4 days you could hardly see any trace of eczema. I will continue the treatment hoping it does not return. If I should hear of any one suffering from a skin ailment I certainly will be glad to recommend Colusa Oil. Kindly send me a few booklets.”

Leg Ulcers

Kathryn McHugh  
317 “E” Shorb Street  
Alhambra, California

May 11th, 1942. “Enclosed please find post office Order for \$5.00 for some more Colusa Oil. I feel quite encouraged after using the \$3.00 bottle. I have quite a number of capsules yet, but will get more later if necessary. I will be glad to recommend it

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for

Identification—(Continued)

to anyone suffering from leg ulcers. My sufferings have been almost more than I could bear—have been in the hospital some time, but am with my daughter now.”

Skin Trouble

Steen Hanson

2087 So. Grant

Denver, Colorado

May 6, 1942 “Please find enclosed check for \$5.00 for which please send me another 4 oz. bottle of Colusa Natural Oil. It seems to do good work.”

Skin Trouble

John O'Brien

4198 31st Street

Detroit, Michigan

May 6, 1942 “Am enclosing money order for six dollars. Please forward me one bottle of Mineral Oil, and one bottle of Mineral Oil Capsules. I am glad to inform you that after three years, I am now able to shave every day if necessary and my skin has cleared up so well, my friends have been remarking about it. I gave most of the oil and capsules away that I first ordered, and I think the man I gave them to is continuing the treatment. I will gladly recommend your products to anyone suffering from skin trouble.”

(Testimony of Chester Walker Colgrove.)  
Defendants' Exhibit Q-1 for  
Identification—(Continued)

Skin Trouble

G. Espelana

San Francisco, California

May 7, 1942 "Enclosed find \$3.00. You seem to be more concerned about getting folks healed than to get their money. I never saw the like of it. And that is the way to do business, by doing good and making money at the same time."

Athlete's-Foot

Mrs. Cora E. Davis

126 "D" Street

Salida, Colorado

May 14, 1942 "Enclosed find \$5.00 for a 4-ounce bottle of Colusa Oil. I wish to let you know Colusa Natural Oil has greatly benefited my feet of a bad case athlete and that I never want to be without having a bottle of this oil on hand, and the Colusa Ointment you sent me have used it as a powder base and find it just splendid for that and many thanks for it and to hear from you soon."

Burns—Athlete's Foot

Ic. C. McElroy

1517 No. Mariposa Ave.

Hollywood, California

October 27, 1940 "About a year ago, while working, I reached down and picked up a bar of iron still very hot from the acetylene torch, and



(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for

Identification—(Continued)

severely burned the whole inside of my left hand and fingers. Another workman applied Colusa Natural Oil to it immediately and the pain stopped entirely in two or three minutes. The burned spots became hard, like callouses, and I went right back to work again, without discomfort and strange as it seems, the blisters healed without filling with water. This was my first experience with Colusa Oil and I since have had a similar experience with like results. In fifty years around the shops I have never seen its equal for burns and my wife completely cured a bad case of athletes foot with but two applications of the oil. I write this hoping others may learn the wonderful properties of your property

Eczema

Mrs. Ned J. Fortney  
1013 Newton  
Kansas City, Mo.

December 30, 1941 "Please send me one bottle of Colusa Natural Oil. My hands for three years have become gradually to be like those described in the "Story of the Hands." I used one-half a bottle of the oil and my hands cleared up in one week."

Eczema

H. W. Clifford  
Kay Hotel, 9th and Main  
Kansas City, Mo.

May 11th, 1942 "Enclosed please find \$5.00 for

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

which please send me another bottle of Colusa Oil. This is no doubt the one thing for people suffering with eczematoral conditions—on receipt of my other order I didn't have it so terribly bad, only a spot on my leg. That never has left over 4 or 5 days at a time for a period of five years. This spot at present has disappeared and a healthy look to the skin with not the slightest of itch existing; however, I prefer the safe side after knowing the torture and want the oil on hand."

Psoriasis

J. F. Griffin

Devine, Texas

May 10, 1942 "I thought that you might be interested to know that I have been troubled with that dreadful skin disease known as psoriasis for the past 20 years, and have tried many kinds of medicine with very little relief. I had just about given up all hope of ever finding anything that would do me any good. One day about the first of March of this year, I was reading my newspaper and noticed your little ad in it. I read it over two or three times, and decided to try it; so I sent for the \$6.00 combination of pills and oil. My body was so completely covered with the dry scale that when the medicine came, I thought, that is just about enough to use on one arm, but I mixed some olive oil with the oil to make it cover more surface, and

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

began to use it, and I want you to know that now I only have two or three very small places left on my entire body and still have some of the medicine left. I can truthfully say that this medicine has worked wonders for me and I shall try to keep some on hand at all times.”

Psoriasis

Mrs. Helen Gingley  
137 Belmont Street  
Brochston, Mass.

May 12, 1942 “I want to tell you that I am so grateful for what Colusa treatment has done for me. I have had psoriasis for 30 years and this is the first time my hands have been clear. I have used your treatment only since March 31st, 1942 and I am amazed as well as delighted. I have enough capsules as you have just sent me 200; I am sending an order today for the \$5.00 size of the oil. In reading over your circular you sent me—that doesn't mean that we can't get the treatment all the time, does it? Because that would be a tragedy after getting it off of me as well as it has—it would only let it get bad again. I shall always use that treatment now and so you can keep a bottle of capsules and also oil the \$5.00 size on hand for me at all times because I shall send for it just as soon as I need it. I can't afford to send for an extra supply now because it is quite expensive. But will send for it as I need it. Please assure me that I can always

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for

Identification—(Continued)

get it. I can do my housework now in comfort and am not depressed like I was before I used your product.”

#### Skin Trouble

Mrs. Mae Griffin

422 West North Street

Springfield, Ohio

May 15, 1942 “Please send another supply of your medicine as it has helped so much to relieve the misery I have been through the last two years. I have been doctoring here but did not get much results; he said it was my age and I had too much sugar in my system. Your oil and capsules have helped the sores more than all the medicine I have taken. I don't know what the sores are called but they start with just a little red pimple under the skin and itch. When they get out they are so ugly looking to have and embarrassing to look at. They have been all over my body; they get awful sore and take so long to heal. I am a widow lady and work all the time so I don't get to use the oil only night and morning but it has been lots of relief. Hoping it will continue to do so for I am tired of people saying what is the matter with your arms.”

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

Skin Trouble

J. S. Mosholder

729 Coleman Avenue

Johnstown, Pennsylvania

May 11, 1942 "I have finished your ointment and liquid and I need no more as the sore is o.k. for which I am thankful. If I can do anything for you at any time I will do so—thank you for the remedy."

Skin Trouble

Mrs. C. Pollock

25 Stratford Park

Rochester, N. Y.

May 10, 1942 "I saw your ad in the newspaper and while it was pretty hard for me to send the money, I felt I must try again. So many things have failed, but my suffering was so great I just had to send my order and ask you to hurry. I thank you very much for doing so. Just a week ago I started using your oil and capsules and today I can say my relief is great. I'm sure I must have more oil and capsules and hope you will understand. In the meantime there are a few friends who also, like myself, have tried everything. I will get in touch with them in the very near future."

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

Miss Victoria Skiba

17 Erie Street

Elizabeth, N. J. "I will always thank you for I have received so much help. I am the most happiest person in the world from grand results I am getting from Colusa Products."

Psoriasis

Mrs. Esther Cherry

7902 Rosewood Street

Cleveland, Ohio "I am well satisfied with your oil and capsules. I have improved greatly. I am not a bit sorry I tried it because it helped me both ways. \* \* \* I sure will recommend your medicine to anyone I even see that has psoriasis or any suffering that they may have."

Athlete's-Foot

Miss Belle Olson

Deer Park, Washington

May 25, 1942 "I should have written you long before this but have just neglected doing it since I have been using your Colusa remedy. My misery and suffering are gone. I have obtained wonderful results after using your remedy and I highly praise your wonderful remedy and am glad to recommend it to anyone suffering with athlete's-foot. I wish everybody who suffers with athlete's-foot to know

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for

Identification—(Continued)

that this is a remedy that's worth trying for the sake of happiness. I know it is worth recommending at any time. I had tried every remedy I could find in the drug stores, but got no relief until I tried your wonderful remedy. Would not think of using anything else now. In a week's time to my amazement that dreaded athlete's-foot had paled nearly unnoticeable and in ten days was completely gone. I am sure thankful to your remedy. You may use this letter in anyway that will help to advertise your remedy. I am enclosing \$5.00. Please send me a bottle of Colusa Natural Oil. I wouldn't be without it now, thanking you for the help."

#### Skin Trouble

W. M. Simpson

Parkin, Arkansas

May 1942 "Want to let you know that I am still using your medicine. It has done me lots of good \* \* \* more good than anything I ever tried. I'd taken radium treatments for five weeks—twice a week—before I got Colusa oil and didn't do me much good on other treatment that cost as much as \$5.00 a treatment but Colusa oil did me more good than any."

Charles Carter

2021½ 4th Street NW

Washington, D. C.

May 22, 1942 "I am satisfied with your products, and receiving great results."

(Testimony of Chester Walker Colgrove.)  
Defendants' Exhibit Q-1 for  
Identification—(Continued)

Stomach Trouble

Arthur Wm. Davis  
% Twin Peaks Mine  
Middletown, California

May 24, 1942 "I am 64 years old and have suffered with stomach ulcers and bloody flux for 35 years until the last three weeks. During the 35 years I have patronised doctors, took all kinds of patented medicines with no good results. I started using Colusa Oil capsules three weeks ago and after the 4th day I have felt relieved and cured. I suffer with no stomach disorders or gasrites or anything else with my stomach and am bothered no more with the flux. The oil for external use is A-no. 1 for any skin itching or breaking out; it will cure any skin troubles right away. I don't propose to ever be without both capsules and external oil anymore."

Eczema

Mrs. Roy Williams  
Utica, Illinois

May 10, 1942 "Want to tell you that I believe I am nearly cured of eczema. It certainly was dreadful! Itched like bee stings. I itched dreadfully before I broke out in spots, and for a long time I had sore spots on my gums and had to leave my plates out so much, but have had no more sores since I took the oil capsules. I only use one bottle and one



(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

and a-half of the oil. I had to use one-third olive oil with the oil. \* \* \* I am so very grateful. \* \* \* Please send me a few more books as some people want to see them, right now. I gave one to a friend to give to a lady who had a child with eczema.”

Hemorrhoid or Piles

Willard F. Barber  
216 W. 3rd Ave.  
Roselle, N. J.

May 20, 1942 “I got from you a jar of pile salve some time ago and will report my piles are healed up with the use of this salve. After using about every advertised remedy and from drug store shelves for over 12 years.”

Psoriasis

John F. Snyder  
Brookville, Kansas

May 11, 1942 “I bought \$6.00 worth of your oil and capsules and find it better than anything I ever used. I have the psoriasis on my face just where I shave. If I could use electric shaver it would cure the psoriasis quicker as a razor irritates the skin and makes it more difficult to heal. I started to use Colusa March 19.”

Skin Trouble

George Sullivan  
Bangor, Pennsylvania

May 25, 1942 “Please send C. O. D. \$3.00 bot-

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

tle of Colusa Natural Oil capsules as soon as possible as the other bottle did him so much good—already his skin is cleaning up wonderful, thanks to Colusa.”

Eczema

Miss Mary Doe  
Higginsport, Ohio

March 19, 1941 “This A. M. some literature advertising your Colusa Oil Products was handed me by a friend who knows my condition very well. The picture of a pair of hands vere very much like mine. I am suffering untold agony—the doctors I have seen say eczema, ringworm and different things. Have had this condition for almost four years and really I have been on the verge of taking my life my agony is so great.”

April 9 1941 “I hardly know how to write to you I am so grateful to you for what your oil did for my poor hands. They are getting well after all these years. I never believed in magic before but do now.”

Itch

F. P. Walker  
Clear Lake, Iowa

April 8, 1940 “I have been bothered with what I called an itch for over 15 years, doring which time I had treated, first with a skin specialist in

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

Mason City, then a skin specialist in Des Moines (12 trips). Then tried Excelsior Springs, Mo.; then a nationally known specialist in Chicago, and finally Rochester, Minn., and I had received no relief. Your natural oil completely cleared up my trouble in three weeks' time and I have not had any signs of recurrence."

March 28, 1942 "It began showing results after the first 3 or 4 applications and in 3 weeks I was cured and it is now 3 years without any come back."

Stomach Trouble

Mrs. A. Venable  
4750 W. 10th Avenue  
Denver, Colorado

May 15, 1940 "We are back in Colorado now. I am sending for a bottle of oil. We have used three bottles and Mr. thinks he can't get along without it. I tried not taking it for awhile and I did notice the difference. My stomach ailment is so much better."

Eczema

Richard P. Hickey  
Box 2—Chestnut Street  
Riverside, California

March 12, 1940 "Your Colusa oil is doing more good for my eczema than anything I have tried in the past seven years besides all the doctors I have

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

been to and the lot of money it has cost me. I have some left as it goes a long way but will need some shortly."

Eczema

Mrs. N. Aselin  
Sheridan Hotel  
Minneapolis, Minn.

May 7, 1941 "Two years ago while in California I purchased a bottle of your "Colusa Natural Oil," to use on eczema and found it exceedingly beneficial. Is there some place I can purchase it in Mpls? and if not will you send me a bottle direct."

Psoriasis

Miss Florence Sourwine  
121 South 21st Avenue  
Maywood, Illinois

May 8, 1941 "I was a severe sufferer of Psoriasis and your Colusa Natural Oil helped me immensely. I have used only two bottles of it and my case has almost entirely disappeared."

Weeping Eczema

C. O. McLees  
1155 E 90th Street  
Los Angeles, California

May 12, 1941 "I am writing this letter of appreciation for having Mr. Warnak of the Warnack Drug Co., 85th and Central Ave. for calling my

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

attention to your product. I have been troubled for about 5 years with weeping eczema in the canal of my right ear and I had tried every known remedy also paid out many dollars to doctors for treatment also tried X-ray treatments in one of our largest hospitals and received no benefit whatever and was terribly discouraged when Mr. Warnack asked me to try Colusa Natural Oil. In about 2 weeks my trouble had entirely disappeared and I have almost forgotten the terrible itching and irritation in this ear. I still have 1/2 half of my original bottle of oil and would not sell it for \$50.00 if I could not obtain more readily. I hope others who are affected with this skin disease will try Colusa Oil and secure the same results that I have."

#### Stomach Trouble and Piles

Mr. Howard Everett

1332 South Hope Street

Los Angeles, California

January 8, 1941 "Some time ago, one of my good friends from Iowa, once a banking competitor—told me some almost unbelievable things about Colusa Natural Oil—so completely fantastic, that if I had not known conservative old John Brown of Cedar Falls, Iowa, for over forty years, I simple would not have believed what he told me. Even then—as "the proof of the pudding is in the eating

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for

Identification—(Continued)

thereof"—I bought a bottle of Colusa Natural Oil Capsules and drove some twenty miles to give them to a good friend—a former employee—whom I knew had suffered from stomach ulcers for years and had been on such a restricted diet that he was simply skin and bones. I didn't see how he could last another six months. He told me he had been in distress with almost constant nausea for a long time. Well, bless my soul! if he didn't come over to my home within two weeks and rave about those capsules. His nausea was gone; he was feeling fine; eating ham, eggs, beefsteak—anything he wanted—and talked about inviting five doctors to a banquet in order to exhibit his rapacious appetite. Take my own case in reference to use of Colusa Hemorrhoid ointment. I have been a sufferer for twenty years, bleeding, protruding, itching piles, fistula and everything that goes with it. I tried everything I could find in drug stores and employed physicians. We have the very latest and best recognized ointments—enough to start a prescription case of our own, but I say to you frankly, there's nothing ever came into our home, through either purchase or sample, for the treatment of hemorrhoids that will compare with Colusa in any degree."

Sophia Armbrecht

East St. Louis, Ill.

November 27, 1939 "As I stepped off the train

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

at Davis there was no one to place the small step as you step off the train. In getting off I either sprained—or the way it felt it seemed as if I had torn the muscles away from the bone and I surely suffered untold agony until our train left Sacramento. I was in such misery I did not know whether I should go to a hospital or go home. Then I thought of the oil—I rubbed some on my leg after I had gotten into my berth and of all miracles, I did not have a particle of pain the next morning and have had none since. I would not take a hundred dollars for what it did for me.”

Skin Trouble

Miss Estell Hill

206 W. North Street

Arlington, Texas

May 26, 1942 “I started using your Colusa Oil and Capsules on March 23 on a very bad case of neuro-dermititis (irritation of the skin caused by the nervous system). My arms from my elbows doen, and all over my hands; my entire face, neck and in the bend of my knees were very sore, the skin split until it would bleed. There was intense itching with all this, too. I had been bothered with this trouble for two years—I went to skin specialists, and spent a small fortune on medicine to doctor it with, but nothing helped me so much and so fast as did your oil. It is really remarkable.

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

Thanks to your wonderful products, I now have clear normal skin, and plan to be married in June. To all skin sufferers who really want relief, I highly recommend your products. You shall be my friend for life."

Psoriasis

Mrs. Swap

Berkeley, California "It certainly was a great thing when Colusa oil and capsules were discovered. I have tried for 10 years to get rid of my psoriasis and everything failed, but now I can wear short sleeved dresses and it certainly is a treat. You surely weren't faking when you said what you did about it."

Skin Trouble

Mrs. Bessie Khirzing

154 Jefferson Avenue

Washington, Pa.

May 26, 1942 "I have just finished the bottle of capsules and found them very satisfactory. I can not praise them enough. I was about frantic before taking your products. I thought I could not stand it any longer. I can't *bepress* to you in words how glad I am with the results. The sores and scabs have all healed on my back. There are some on my hips and legs yet which I know will heal in time."



(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

Scalp Trouble

Mrs. Dorothy Berg

124 21st Street

Toledo, Ohio

May 30, 1942 "I am writing you to let you know how my skin trouble is coming using the oil and capsules. I received capsules starting with one a day from the 14th of May, then 2 a day from the 17th of May. Received oil on the 21st day of May. Then started with 3 capsules and started at once with the oil but had to use half olive oil as it burned my skin too much. Now it is the 30th of May and my head is like a human beings the first time in 25 years and I am very faithful with capsules and oil. When I started my head was like a board—gave myself hot olive oil treatments took all the scabs off. Then started the oil treatments and so far it has proven great results. I am willing to keep on doing as I have been doing for some time to rid myself of this terrible trouble. \* \* \* I am only too happy to report the great results I have received with the oil and capsules. I would be only too happy to shout it to the world. I am once again like human being. No one knows only those that have a skin trouble the embarrassment of such a disease not no fault of one's self. You have with my happy permission to use this letter or my name in full any time as I am only too happy to help others that have such a terrible skin trouble."

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

Itch

Mrs. Adeline Rogers  
2588 N. Fair Oaks Ave.

Altadena, California "I have received wonderful results from Colusa Products. Before I started using Colusa oil in my ears for that horrible itching they almost drove me daffy. Couldn't rest at night it made me so nervous. After the itching would cease they would break out with seemingly pimples get so sore I couldn't bear my ears to touch the pillow. After a few treatments I could rest at night and my ears seem to be normal again. Thanks to Colusa Oil and to you."

Skin Trouble

Mrs. M. Nastav  
947 Orville St.  
Kansas City, Kansas

May 26, 1942 "This is the very first time I am sending for some of this Colusa Oil and it sure has helped me wonderful. I met a friend of mine at a shower and she told me about it. She gave me a sample and I just put it on once it leaves the itch and pain immediately. So you see I can't praise it enough. I also shall tell my friends."

(Testimony of Chester Walker Colgrove.)

Defendants' Exhibit Q-1 for  
Identification—(Continued)

Skin Trouble

Harry W. Gray

3 Merrill Street

San Francisco, California

June 1, 1942 "Enclosed find \$6.00 in payment for one \$3.00 Bottle of Colusa Natural Oil (2 ounces) and one \$3.00 Bottle of Colusa Natural Oil Capsules (100 capsules). It is the only thing that I have used that gave me any relief."

Skin Trouble

Mrs. Willie E. Clark

518 Lottie Street

Waco, Texas

June 2, 1942 "I received the treatment and have used it steadily ever since—my leg was a terrible looking thing all scaly and dark and itched so I couldn't hardly do anything for scratching but now it is so much better—the itching and scratching is almost gone. Colusa Oil and capsules are marvelous, I can speak for it anywhere. I hope to be able to get another order in soon. I want to always keep some on hand. Thanks to you all for Colusa Products."

(Testimony of Chester Walker Colgrove.)  
Defendants' Exhibit Q-1 for  
Identification—(Continued)

Skin Trouble

Mrs. Minnie Gibbs  
3835 Yates Street  
Denver, Colorado

June 3, 1942 "I received the last order of pills.  
\* \* \* Many thanks—am fine now. No more sore  
face for me since I know about Colusa Remedies.  
I'd been getting treatments from 2 best skin spe-  
cialists here and seemed to help, then sores break  
out again and was so discouraged for 2 years. Now  
to be free is wonderful. When I write a letter to  
my friends or relatives I mention Colusa."

---

"Mr. Doyle: May we have an exception to the  
last ruling, your Honor? [116]

"Mr. Gleason: Q. You heard me read, Mr. Col-  
grove, a statement from the information in this  
case with respect to other users crediting various  
and sundry things, a statement contained in some  
of the advertising matter. Upon what did you base  
that statement?

"Mr. Zirpoli: Same objection; irrelevant, incom-  
petent and immaterial.

"The Court: Objection sustained.

(Testimony of Chester Walker Colgrove.)

“Mr. Doyle: I desire an exception, if the Court please.”

The witness continued:

Yes, I made a very thorough investigation before engaging in the marketing of this product; I talked with users of the oil; engineers, people who had sold it previously to my knowledge of it, or having heard of it; and it had the reputation of a real miracle product.

“Mr. Zirpoli: Your Honor, I ask that the witness’ statement about its reputation go out.

“The Court: Let the miracles go out, ladies and gentlemen of the jury, and disregard it for any purpose in this case.

“Mr. Gleason: Do you have available, Mr. Colgrove, the statement upon the basis of which these statements were incorporated in the newspaper mat with respect to the efficacy of radium through the body. Can you give counsel the authorities from which that was procured?

“A. Yes, sir.

“Mr. Zirpoli: I object to that. Authorities as given by this witness are irrelevant and immaterial.

“Mr. Doyle: May he answer the question, if your Honor please?

“The Court: What question?

“Mr. Doyle: The question as to the source from which he obtained this statement which appears quoted in the mat. It appears as quoted. [117]

“The Court: It matters very little the source of

(Testimony of Chester Walker Colgrove.)

the information or where it came from. We are not concerned with the source of it.

“Mr. Doyle: Exception, if your Honor please.”

It was here stipulated that if Miss Nelson, representative of the firm which printed the labels, were called she would testify this was a mistake on the part of her printing firm; and that in the printing of the labels involved in the Third Count in this case, the designation “ $\frac{3}{4}$  of an ounce” was inadvertently omitted from the labels, and that Mr. Colgrove, as manager of the defendant company had previously sent said printing firm a letter, marked here as Defendants’ Exhibit P for identification, which was received by the McCoy Label Company; and that within a week of this time, Mr. Colgrove had the label company correct this inadvertence and put upon the label the designation “ $\frac{3}{4}$  of an ounce.” Will that be so stipulated?

“Mr. Zirpoli: Subject to the objections heretofore made that it is irrelevant and immaterial.

“The Court: Objection sustained.

“Mr. Gleason: An exception, if the Court please.

“The Court: Very well.”

Mr. Gleason, at this time, to complete that record, offered in evidence Defendants’ Exhibit P for identification, which is the letter Mr. Colgrove previously referred to.

“Mr. Zirpoli: We make the same objection. It

(Testimony of Chester Walker Colgrove.)

was offered once before, and I object again that it is irrelevant and immaterial.

“The Court: Objection sustained.

“Mr. Doyle: May we have an exception?

“The Court: Exception.”

The witness was then cross examined and testified further:

I obtained the first production of oil in 1939 and began [118] marketing in January of 1940; I had drilled a gas well on property twelve miles east of this property, and when I became interested in the medicinal oil, I negotiated for the lease on the property where this medicinal oil could be obtained. From 1922 to 1927, I was president of a coal company, called Empire Collieries; from 1928 to 1932, I had a business known as the C. W. Colgrove Systems, Inc., which was a mutual estate association under which I sold life insurance.

“Q. In 1930, did you continue the operation of the insurance business in the State of Illinois?

“Mr. Gleason: We object to that on the ground that it is incompetent, irrelevant and immaterial, and has nothing to do with the issues in this case.

“The Court: Objection overruled.

“Mr. Gleason: May we have an exception?

“The Court: Note an exception.

“A. Yes, sir.”

It was here stipulated that defendants' objections would run to this line of questioning with exceptions reserved.

(Testimony of Chester Walker Colgrove.)

The witness continued:

I quit the insurance business in 1932; I sold some oil leases in Colusa County in 1938; I am president and treasurer of the Empire Oil and Gas Company; my daughter is secretary; my wife, daughter and I constitute the board of directors; it is a family corporation; Colusa Products Company is a fictitious name company which operates as a sales agency, and is owned by Empire Oil and Gas Corporation.

“Mr. Zirpoli: Q. Mr. Colgrove, do you ever recall appearing at the—just one question: You told us about a Mr. Watson, I believe, being a drug consultant.

“A. Mr. Dick Addison.

“Q. Anderson? A. Addison.

“Q. Of course, you don't mean by that he is a man employed by the [119] Federal Food and Drug Administration?

“A. No, an independent occupation.

“Q. And he has no governmental connection as an official?

“A. Not now. I think he previously did.”

The Mr. Addison I referred to is an independent consultant. I remember appearing at a hearing in Los Angeles and submitting a brief in quadruplicate to Mr. Andrew Brown; I think the paper you now show me is a copy of it.

“Mr. Gleason: Just a moment, Mr. Colgrove; we object to [120] this on the ground that it is incom-



(Testimony of Chester Walker Colgrove.)

petent, irrelevant and immaterial, if the Court please, not proper cross examination, has no bearing upon the issues in this case.

“Mr. Zirpoli: I would like to submit I am entitled to test the credibility of the witness, your Honor.

“Mr. Gleason: It has nothing to do with the credibility of the witness.

“Mr. Zirpoli: Yes, it has.

“The Court: When was this?

“Mr. Zirpoli: The witness took the stand.

“The Court: In 1939?

“Mr. Gleason: This is a letter, if the Court please, dated October 28, 1940. So the Court will know——

“The Court: I will allow it. Objection overruled.”

The letter you show me is a copy of a letter written me by Dr. Woodman, but the original letter did not have “M.D.” after his signature; my stenographer must have added the “M.D.” by mistake. When I submitted the letter it evidently had “M.D.” on it; I knew Dr. Woodman for six months and saw him the day of the hearing; the photostat you show me is a copy of the letter Dr. Woodman gave me and “M.D.” does not appear on it.

“Mr. Gleason: We object to that on the ground that it is utterly incompetent, irrelevant and immaterial. What bearing has that on this case?

“The Court: That is a matter entirely for the jury. Let the jury determine.

(Testimony of Chester Walker Colgrove.)

“Mr. Glason: He testified that his secretary made a mistake.

“Mr. Zirpoli: I will ask that these two exhibits be marked next in order in evidence as one exhibit.

“Mr. Gleason: May we have an exception?”

The documents were admitted and marked Government's Exhibit No. 13. [121]

PLAINTIFF'S EXHIBIT No. 13

Dr. Wm. G. Woodman  
Physician and Surgeon  
Suite 1221 Quaranty Bldg.  
6331 Hollywood Boulevard  
Hollywood, California

Oct. 28, 1940

To Whom It May Concern:

This is to state that I have used Colusa Natural Oil both internally in capsule form and also as an external application on a number of cases of psoriasis with considerable benefit to the patient. There has not been a single case in which there have been any unfavorable reactions.

Previous to the introduction of the Colusa Natural Oil I had refused to accept or treat psoriasis but I now feel that I can conscientiously accept them and help to alleviate their condition.

Sincerely yours

(Signed) WM. G. WOODMAN, M.D.

[Endorsed]: Filed June 26, 1942. .

## DR. WM. G. WOODMAN

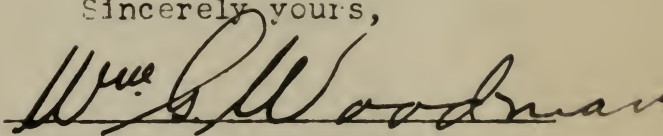
PHYSICIAN AND SURGEON  
 SUITE 1221 - GUARANTY BUILDING  
 6331 HOLLYWOOD BOULEVARD  
 HOLLYWOOD, CALIFORNIA  
 GLADSTONE 1080

October 28, 1940

To whom it may concern:

This is to state that I have used Colusa Natural Oil both internally in capsule form and also as an external application on a number of cases of psoriasis with considerable benefit to the patient. There has not been a single case in which there have been any unfavorable reactions. Previous to the introduction of the Colusa Natural Oil I had refused to accept or treat psoriasis but I now feel that I can conscientiously accept them and help to alleviate their condition.

Sincerely yours,



Dr. William G. Woodman

WGW/hc

U. S. DEPARTMENT OF JUSTICE

No. 27554-R

U. S. EX. No. 13 in evidence.

FILED June 26, 1942

FBI - HOLLYWOOD, CALIF.



(Testimony of Chester Walker Colgrove.)

“Mr. Gleason: May we have an exception, if the Court please?”

“The Court: Note an exception.”

The witness testified further on redirect examination:

“Mr. Gleason: Q. Referring to this letter that counsel just asked you about, in any of that type-written copy attached to the photostat and upon which appears ‘Dr. W. G. Woodman, Physician and Surgeon, Suite 1201 Guaranty Building, Hollywood,’ and the signature, ‘W. G. Woodman, M.D.’, did you cause this to be typed and the ‘M.D.’ to be placed thereon?”

“A. I didn’t cause the ‘M.D.’ to be placed thereon.

“Q. Your secretary did that? A. Yes.

“The Court: Q. How did it get on there?”

“A. I caused the letter to be copied and she copied it and put the ‘M.D.’ on as a mistake.

“Q. You didn’t put it on? A. No.

“Q. You don’t type your letters, do you?”

“A. I don’t type my letters, and I don’t indulge in misrepresentations.

“Mr. Zirpoli: Q. But that is one of the carbon copies you gave to Mr. Brown of the Food and Drug Administration?”

“A. I have admitted it such, yes.”

## DR. W. T. S. VINCENT,

who had previously been sworn as a witness, was then recalled by defendants, and testified further:

The Guidry case was one of *acne vulgaris*; I have seen Mr. Guidry in the courtroom yesterday and today; he is now in the courtroom—he is that gentleman in the green suit.

“Mr. Gleason: I want you to tell the ladies and gentlemen of the jury briefly his condition today with respect to his face, compared to what it was when you first started to treat him.

“A. Well, there is a vast difference. I noticed when I was talking to him there is a decided difference, because when he came first [122] to the office he was truly a tough case of *acne vulgaris*, being the worst of the two *acnes*. He had just about as bad a case as ever I saw. Do you want me to say anything about being under treatment at the time?”

His condition is vastly improved and vastly better than when I first saw him in the office. Yes, he now has a scar; that is quite natural. *Acne vulgaris* is a postular disease, not like *rosacea*, which is on the skin, and red. *Acne vulgaris* punches out tissue like smallpox, and after you get through healing the *acne*, itself, there is absolutely certain to be crater-formed pits, marks, and scars as in smallpox. I saw him in May, but not as a patient, as he was through treatment; I gave him some medicine for an internal condition, but I didn't even charge him for it.

(Testimony of Dr. W. T. S. Vincent.)

The witness was then cross examined:

“Mr. Zirpoli: Q. Doctor, you say that he has those scars and he has those indentations as a result of this *aene vulgaris*? A. He has.

“Q. Is that correct? A. It is.

“Q. In other words, Colusa Oil, then, did not restore the natural skin surface over where the scars were and the indentations were, did it?

“A. I would like to answer that in some way besides Yes and No.

“Mr. Gleason: Go ahead; you can answer.

“Mr. Zirpoli: Q. I know; but did or did not it restore the natural skin surface?

“A. It couldn't do it, nor any other remedy.”

At this point the defendants rested, and the Government commenced its rebuttal by calling

HOMER H. BAUMGARTNER,

who testified:

I live in Los Angeles; in looking at Defendants' Exhibit O I recognize it as a photograph of my hands and also my signature; one shows my hands as of February 28th and the other as of March [123] 11th; I went to see Mr. Colgrove about Colusa Oil; I took it home and put it on my hands; I used an electric lamp with it, which was given me by Dr. Lilliquist, a dentist; I would put the oil on my hands and then use the lamp for the heat; I did this about every half hour. I went back after twelve days and had the second photograph taken;

(Testimony of Homer H. Baumgartner.)

the back of my hands were all cleared up. I returned later, but the palms of my hands were still sore; they got better, but still not cleared up; my hands got worse than appears in that picture; last Easter they were just like a piece of beefsteak; my hands are better now; I did not use Colusa Oil when my hands were like a beefsteak. On February 28th, the back of my hands itched and burned both; the oil itself did not relieve the itching, but the oil and lamp did.

On cross examination, the witness further testified:

Dr. Lilliquist was not my dentist; he was a friend who belonged to the same church that I did; I suffered for quite a long time before I met Mr. Colgrove; I went to the dentist, Dr. Lilliquist and asked him to help me, to look at my teeth; while in his office, he phoned Mr. Colgrove and made an appointment for me to see him; I went over and met Mr. Colgrove; my hands were then in the condition as shown on the left-hand side of Defendants' Exhibit O; at that time they itched and burned very badly; I met Mr. Colgrove in the Palace Hotel, on Vine Street, in Hollywood, and he gave me this oil; Dr. Lilliquist gave me the lamp the next morning after I saw Colgrove; the oil and the lamp did the work, relieving me for the time being from the itching and torment; I then had had this disease for sixteen years; I previously had gone to doctors, but they had not cured this



(Testimony of Homer H. Baumgartner.)

disease; they did not give me as much relief as I got from Colusa Oil; with the oil and lamp together I got relief for a short period; I never tried the lamp alone before nor since.

On redirect examination the witness testified:

[124]

“Mr. Zirpoli: Now, just one question.

“Q. You returned the lamp to this dentist, is that correct?      A. Yes, sir.

“Q. And he asked you about Colusa Oil. Did you try anything else that anyone else has given you since?

“A. Since then Mother sent me some salve from back home.

“Q. Your own mother did?      A. Yes.

“Q. All right. And since did you cause your teeth to be extracted?

“Mr. Doyle: We object to that.

“The Witness: I didn't get that.

“Mr. Zirpoli' Q. Did you?

“A. I didn't get what you said there.

“Q. Did you cause your teeth to be extracted?

“A. I did have my teeth extracted since.

“Q. What has been your general physical condition since the extraction of the teeth?

“A. Quite a bit better.

“Mr. Zirpoli: That is all.

“Mr. Gleason: That is all.”

## AMOS J. GUIDRY

was then called as a witness by the Government, and testified as follows:

I reside in Houston, Texas; I took treatment for acne; I visited Dr. Vincent, who has been a witness here.

“Mr. Zirpoli: Q. How long did you go to him and were you in his care with relation to treatment for acne?

“A. Well, about eight or ten months, I imagine; something like that.

“Q. Did he at any time use Colusa Oil in the treatment of you? A. Yes, sir.

“Q. And in treating you with Colusa Oil did he do anything else or prescribe anything else?

“A. What do you mean, the treatment I was given?

“Q. Yes.

“A. I was given something else besides that.

“Q. What did he do besides give you Colusa Oil at that time? [125]

“A. He put me on a diet and he used shots.

“Q. Injections? A. Injections.

“Q. In your bloodstream? A. Yes, sir.

“Q. In other words, where? In your arm?

“A. In my arm and back.

“Q. Did you observe any change in your condition of acne from the use of Colusa Oil?

“A. No, sir.

“Q. Did you observe any change for the better?

(Testimony of Amos J. Guidry.)

“A. I can’t see where it helped me.” [126]

On cross examination the witness testified further:

I had suffered from acne about six to eight months before I saw Dr. Vincent; I was then twenty-nine years of age, single; I had only used different salves I had bought at drug stores; I don’t remember the names of any salves I used; none of them helped me or gave me relief.

Yes, when I first saw Dr. Vincent my face was in bad shape, being broken out generally all over my face; it was much worse than it is today. Yes, when I first called on Dr. Vincent I was ashamed to go out on the street; it was itchy; that was caused by some sweets I had eaten; by cutting out some things and then eating lots of it another day, it would itch some more, and then when I watched my diet, the condition improved; I first discovered that a good while afterwards, after I had been going to Dr. Vincent; I discovered it was my diet, that some things made me get worse; Jell-O, ice cream, desserts, pastry; saccharin in coffee made the condition worse. About a year and a half ago I saw Dr. Gandy, which was about five months after I started with Dr. Vincent; my face was in bad shape again; Dr. Gandy gave me some radium treatments and a strict diet; he didn’t cure it; my face cleared up on the outside; I lost a lot of weight, and he said he would have to feed me some starchy foods, boiled potatoes with their jackets on; while

(Testimony of Amos J. Guidry.)

treating with Dr. Gandy, my weight went from 165 to 145 pounds; this condition came back after I stopped going to Dr. Gandy; I stopped treatments with him about six months ago. I treated with him for three months, twelve radium treatments, one each week; since that time I have treated with no other doctor; I haven't used Colusa Oil since I treated with Dr. Vincent. I couldn't tell you when I started treating with Dr. Vincent whether applying Colusa Oil eased the itching.

"Mr. Doyle: Q. It is a fact, is it not, that prior to the [127] time you treated with Dr. Vincent, you had not found or discovered any treatment or preparation which gave you relief from the itching of the acne that you had; that is true, isn't it?"

Yes, I couldn't find anything. Anything I put on my face, it seemed like it made it worse, any ointment or anything. No, the Colusa Oil did not make the itching worse. My present occupation is grocery clerk.

On redirect examination, the witness testified:

Yes, the condition of my face was worse in appearance when I left Dr. Vincent than it is now.

---

### HARRY Y. ANDERSON

was then called as a witness by the Government and testified as follows:

I reside in Ephriam, Utah; I had occasion to use Colusa Oil in May, 1941; I applied it to the joints

(Testimony of Harry Y. Anderson.)

of my arms; they were red and watery-like; the condition was eczema; I used Colusa Oil for a week; I noticed no difference or improvement in the condition; the oil did not stop the itching.

On cross examination the witness testified:

I did not use the oil after the week; I would say I applied it about twelve times altogether; I had this condition for about two weeks before I tried the oil; I have not had it since; it went away about three weeks after I used this oil; I used a home remedy, sulphur and lard; I am a carpenter; I got Colusa Oil at the drugstore in Ephriam, where I live. This condition was on the inside of my arm, in the region of my elbow; it did not run up to my shoulder; I once had this condition years before; a doctor gave me some black salve, and that fixed it up after a month's treatment; I have had no attacks since the Spring of 1941; Colusa Oil did not stop the itching or burning. The Colusa Oil did not help me at all in my opinion.

On redirect examination, the witness testified as follows:

There was an improvement in the condition of my arms after the use of sulphur and lard. [128]

---

### MRS. MARY ELLEN HOSFORD

was then called as a witness by the Government, and testified as follows:

I reside in Boise, Idaho; I had occasion to use

(Testimony of Mrs. Mary Ellen Hosford.)

Colusa Oil in July and August, 1941, for psoriasis on my legs and arms; I used the oil for a month and a half; there was no change as far as better; it made the spots of my legs very sore; there was no improvement; I still have that condition on my legs.

The witness testified on cross examination as follows:

I have been afflicted with psoriasis for five years; it has come and gone; I went to four doctors for treatment, all in Boise, Idaho. One was Dr. Almond, a skin specialist; he is dead now. The prescription he gave me did not help me; I then saw Dr. West; he is a physician and surgeon; he gave me several prescriptions; just ointments; I used the ointment Dr. West prescribed; I treated with Dr. West for a couple of years; he also gave me some gold and silver injections; Dr. West didn't cure this condition; he didn't help me at all. Then I visited Dr. Simonton; he prescribed an ointment; it looked like the same thing; he also gave me some sulfanilimide and arsenic to be taken internally; he gave me some black stuff for external application. I treated with him for about a year, and the condition cleared for about a month; it had definite effects right now; I lost my skin; I got rid of my psoriasis, but it came back in about a month; the salve he gave me did not help, but the arsenic and sulfanilimide did, because I got rid of it in three days, and I wasn't using the salve at the time I took

(Testimony of Mrs. Mary Ellen Hosford.)

the internal treatment. Dr. Simonton is still practicing in Boise; I tried his treatment again and the second time it didn't work. Then I went to Dr. Beck in Boise; he examined me but did not prescribe; he said, "The medical profession doesn't know anything to do for it." He said, "I could give you salves; I could prescribe for you, but there isn't anything to do for psoriasis." I also saw Dr. Smith, our family doctor, and he told me the same [129] thing. I have just lately called on Dr. Smith; he said he could give me all kinds of prescriptions, but that they wouldn't help me; and I said, "I know, I have spent hundreds of dollars trying to get rid of it." He said, "That is all we could do is experiment on you, because they haven't found anything yet to cure it."

It was after Dr. Beck told me there was nothing he could do that I acquired Colusa Oil; I bought it in a drugstore in Boise; the druggist asked me to try it; I used Colusa Oil for a month and a half. I tried to use it according to directions; it said "apply morning and night", but it made my legs too sore to do that, so then I stopped using it both day and night and just tried it once a day, and even then it made my legs too sore, and so I just used it occasionally, maybe once every two or three days after that, for about a month and a half, until I had used practically all of the bottle, and I went back to the druggist and said, "It didn't help me at all." I asked for a refund of my money and he gave it to me.

## WILLIAM MILNE

was then called as a witness on behalf of the Government and testified as follows:

I reside in Chicago, Illinois; I have suffered from varicose ulcers; I used Colusa Oil in September, 1940, for about two and a half weeks for this condition; there was no improvement from the use of the oil. I have since had surgery and the ulcers healed up.

On cross examination the witness testified:

I had these ulcers for twenty-five years; they would heal up in periods and come back again; I had ulcers on both legs; during that period I treated with various doctors; I went to the Cook County Hospital; that is a very famous hospital in Chicago; I was a day patient in the clinic; there was no special department for varicose ulcers, but there were others with the same condition who attended the same department I did; I went to the [130] dispensary where they put zinc salve on and bound up the leg; no doctor ever gave me relief over all these years; just happened to get some salve and it would heal up for about five years and then would break out again; when I used the salve the doctors gave me it would take six months to clear up the condition, and sometimes it would carry on for a year. It would take between six months and a year of such treatment to clear up.

I bought Colusa Oil in Chicago and used it only two and a half weeks; I had the surgery in August,



(Testimony of William Milne.)

1941; before having surgery, I had my legs put in casts by the Visco Corporation; before I used the Colusa Oil my legs were very sore.

---

DR. JOHN B. KATHE

was then called as a witness on behalf of the Government and testified as follows:

I am an inspector for the United States Food and Drug Administration and have for twenty-five years been in that employment; I had occasion to call on Dr. Woodman in his office when he was alone; I had a conversation with him, but I did not tell him he should be too busy to come to court.

On cross examination the witness testified:

I saw Dr. Woodman only once; I don't know if any other inspector called on him; I went to see him about a testimonial that he had given. I asked Dr. Woodman if he expected to attend this trial and he said he did expect to attend; I asked him about his patients, if he had seen any after giving them treatment; I talked to him about the "M.D." on that letter.

---

"Mr. Zirpoli: At this time, if the Court please, I wish to introduce in evidence the formula from Government's Exhibit 14 for identification, which

is the United States Pharmacopoeia, which was identified by Dr. Von Hoover.

“Mr. Gleason: I want to interpose an objection. We object to the introduction of this book or any portion of it upon the ground that it is utterly incompetent, irrelevant and immaterial. [131]

“The Court: For the purpose of the record, what is the purpose of this offer?”

“Mr. Zirpoli: The purpose of this offer is this: when Dr. Von Hoover was on the stand, I asked him about the Pharmacopoeia of the United States and the Homeopathic Pharmacopoeia, and he stated there were both, and that this was the Allopath. I asked him if he could give me the formula for sulphur ointment, and he told me that the general formula contained five per cent sulphur. I want to show what the formula is in that Pharmacopoeia, which was his Bible.

“The Court: For that limited purpose I will allow it.

“Mr. Acton: May we have an exception?”

“The Court: Note an exception.”

Mr. Zirpoli then read from page 424 of the Pharmacopoeia of the United States:

“Unguentum sulphuris—sulphur ointment. Sulphur ointment contains not less than 13.5% and not more than 16.5% S”—meaning sulphur. Then it gives the formula as follows: “Precipitated sulphur 15 grams; wool fat, 5 grams; yellow wax, 5 grams; white petroleum, 75 grams”—making a total of 100 grams.

Thereupon the case was submitted by both sides.

Thereupon the jury was excused and retired from the courtroom.

Thereupon, each defendant separately and duly moved the Court that it direct the jury to return a verdict of not guilty as to Count One in the information as to said defendant, on the ground that the evidence was and is insufficient to justify the return of any verdict, save and except a verdict of not guilty as to said defendant.

Thereupon the Court denied said motion of each of said defendants, which ruling was duly excepted to by each defendant. Exception. [132]

Thereupon, each defendant separately and duly moved the Court that it direct the jury to return a verdict of not guilty as to Count Two in the information as to said defendant, on the ground that the evidence was and is insufficient to justify the return of any verdict save and except a verdict of not guilty as to said defendant.

Thereupon the Court denied said motion of each of said defendants, which ruling was duly excepted to by each defendant. Exception.

Thereupon, each defendant separately and duly moved the Court that it direct the jury to return a verdict of not guilty as to Count Three in the information as to said defendant, on the ground that the evidence was and is insufficient to justify the return of any verdict save and except a verdict of not guilty as to said defendant.

Thereupon the Court denied said motion of each

of said defendants, which ruling was duly excepted to by each defendant. Exception.

Thereupon, each defendant duly moved the Court that it require the Government to elect as to which of the two alleged offenses covered by the Third Count in the information the Government desired to submit to the jury. Counsel for the defendants asserted and claimed that said Third Count charges two separate and distinct offenses, one an alleged omission of certain quantitative designations from the jars of ointment involved in said Third Count, and the second, an alleged misbranding by the making of false statements on the label and in the advertising matter accompanying said jars of ointment. This matter was fully argued by the respective counsel and then submitted. Whereupon, the Court denied these motions of the defendants, to which ruling each defendant duly excepted. Exception. [133]

Thereupon, the jury returned and the cause was argued by counsel for the Government and by counsel for the defendants, and thereupon and on June 30, 1942, the Court instructed the jury as follows:

“The Court: Ladies and gentlemen of the jury, it now becomes the duty of the Court to instruct the jury on the law of this case. It is the duty of the jury to apply the law thus given to them to the facts before them. The jury are the sole judges of the facts. It is the duty of the jury to give uniform consideration to all of the instructions

which will be given, to consider all parts of them together, and to accept such instructions as a correct statement of the law involved.

“The law under which this prosecution is brought is an act known as the Federal Food, Drug and Cosmetic Act. As far as it is pertinent to this case it provides that it shall be unlawful for any person to introduce or deliver for introduction into interstate commerce any drug that is misbranded and provides that any person who shall so violate this Act shall be guilty of a misdemeanor.

“Insofar as the definition of the term ‘drug’ is applicable to this case, the Federal Food, Drug and Cosmetic Act provides that the term means articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of diseases in man or other animals.

“I charge you that the articles involved in the three counts of the information come within this definition of a drug and are drugs within the meaning of the Act.

“The same Act further provides that a drug is misbranded if its labeling is false or misleading in any particular.

“The defendants, Empire Oil and Gas Corporation, a corporation, and Chester Walker Colgrove, its president and treasurer, have been informed against by the United States Government in [134] conformity with the regular practice in cases charging a violation of the said Federal Food, Drug and Cosmetic Act, and in that respect the Government

charges that the defendants within the jurisdiction of this Court and on or about the 31st day of January, 1941, then and there did unlawfully introduce and deliver for introduction in interstate commerce, from Berkeley, California, to Mountainair, State of New Mexico, the drugs alleged to have been so introduced and delivered for introduction in interstate commerce in each of the three counts of the information.

“It further charges that the Colusa Natural Oil referred to in the first count, when so introduced in interstate commerce, was then and there misbranded within the meaning of said Act of Congress, in that the statements on the labeling of said article and on the circular and newspaper mat accompanying the said article, regarding the efficacy of said drug in the cure, mitigation, treatment or prevention of diseases of man, were false and misleading in that the said statements represented and suggested that said drug when used alone or in conjunction with the Colusa Natural Oil capsules, would be efficacious in the treatment of eczema, psoriasis, acne, ringworm, athlete’s foot, burns, cuts, poison ivy and varicose ulcers; would act on surface skin irritations as a stimulant and would increase circulation and aid in healing; would be efficacious to relieve discomfort and pain; would be efficacious to inhibit the spreading of skin irritations and to restore the normal skin surface, and would be efficacious to kill or check disease germs; when in truth and in fact the said drug, when used

alone or in conjunction with Colusa Natural Oil Capsules, would not be efficacious in the treatment of eczema, psoriasis, acne, ringworm, athlete's foot, burns, cuts, poison ivy or varicose ulcers; would not act on surface skin irritations as a stimulant; would not increase circulation, and would not aid in healing; would not be efficacious to relieve discomfort or pain, inhibit [135] the spreading of skin irritations or restore the normal skin surface, and would not be efficacious to kill or check disease germs.

“It further charges that the Colusa Oil Capsules referred to in the second count of the information when so introduced in interstate commerce was then and there misbranded in that the statements on the labeling of said article and on the circular and newspaper mat accompanying the same, regarding the efficacy of said drug as alleged in the first count which I just stated to you, were false and misleading in the manner and in the particulars I just stated in telling about the charges under the first count.

“And in the third count the information charges that the Colusa Natural Oil Hemorrhoid Ointment referred to therein when so introduced in interstate commerce was then and there misbranded in two particulars, first, in that the statement on the label and the accompanying circular regarding the efficacy of the drug in the cure, mitigation, treatment or prevention of disease in man was false and misleading, in that the said statements represented and suggested that the drug would be efficacious in

the treatment of hemorrhoids and piles, when in truth and in fact, said drug would not be efficacious in the treatment of hemorrhoids or piles, and, second, in that it was in package form and its label did not bear an accurate statement of the quantity of the contents in terms of weight or measure.

“In this latter connection, I call your attention to the fact that a drug shall be deemed to be misbranded if in package form unless it bears a label containing an accurate statement of the quantity of the contents in terms of weight, measure or numerical count.

“I have advised you that the defendants are charged with having violated certain provisions of what is known as the Food and Drug Act, the purpose of which was and is to protect consumers [136] against impure and adulterated food and drugs, or which are misbranded or which contain misleading claims pertaining to the therapeutic and curative efficacy of the product. The prohibition of this Act is directed only against the introduction into interstate commerce of any article of food, drink, or of any drug either adulterated or misbranded. In arriving at your decision in this case, you are not concerned with the wisdom of this Act of Congress in passing the Food and Drug Act. You are only concerned with the facts in this case. You must determine what the facts are in relation to the issue which is formed by the information filed and the plea entered by the defendants.

“To this charge the defendants have pleaded Not



Guilty, and you are instructed that this plea puts in issue and is a denial of all the material allegations in the information. This places upon the Government the burden of proving the allegations of the information against the defendants beyond a reasonable doubt, and to exclude from your minds any reasonable doubt of the defendants' innocence.

“The defendants are presumed to be innocent until they are proved otherwise throughout the entire trial, and until the Government produces evidence so strong and convincing that it removes from your mind any reasonable doubt as to the defendants' guilt.

“The first count in the information charges that the defendants misbranded Colusa Natural Oil in certain respects, as particularly charged in lines 4 to 29 on page 4 of the information. The prosecution charges that the defendants represented that this oil would be efficacious in the treatment of eczema, psoriasis, acne, ringworm, athlete's foot, burns, cuts, poison ivy and varicose ulcers; and that this oil would act on surface skin irritations as a stimulant and would increase circulation and aid in healing; and would be efficacious to inhibit the spreading of skin [137] irritations and to restore the normal skin surface; and would be efficacious to kill or check disease germs; and would be efficacious to relieve discomfort and pain. The prosecution further charges that these alleged representations of the defendants were false and that therefore the Colusa Natural Oil was misbranded under the Pure

Food and Drug Act. These are the only charges with which you are concerned under the first count of this information. The Government has the burden of proving to you by competent evidence, beyond a reasonable doubt the truth of these charges.

“It is not necessary for the Government to prove the falsity of all of the aforementioned alleged representations, but it is sufficient if the Government proves to you beyond a reasonable doubt the falsity in any material respect of any of said alleged representations. The various matters and statements quoted from the label and advertising matter accompanying Colusa Natural Oil, as particularly set forth on pages 2 to 4 of the information, are not of necessity in issue in this case, except insofar as they pertain to or relate to the aforementioned charges and accusations made by the prosecution in lines 4 to 29 on page 4 of the information.

“The issue under the second count in this information is substantially the same as that under the first count, and the instructions just given to you with respect to the first count apply to, and are to be considered by you with respect to the second count. In this connection it might be noted that the charges and accusations under the second count are contained in lines 2 to 28 on page 6 of the information.

“The third count is somewhat different from the other two. It consists of two phases. The first phase is that the defendants misbranded a certain shipment to New Mexico of jars of Colusa Hemor-

rhoid Ointment. The third count charges that contained in a [138] circular enclosed with said jars was the following statement: 'For external use in relieving the discomforting irritations of hemorrhoids or piles.' The Government claims and charges that this was equivalent to a representation that said drug would be efficacious in the treatment of hemorrhoids and piles, and the Government further charges that said drug would not be efficacious in the treatment of hemorrhoids or piles. The burden is upon the prosecution to prove to you beyond a reasonable doubt the truth of both of these charges, and if they have failed to do so, you must acquit the defendants insofar as this phase of the third count is concerned.

"In the second phase of the third count the Government also charges that the defendants failed to place upon the jars of ointment shipped to New Mexico an accurate statement of the quantity of contents in terms of weight or measure. This is what is referred to as the second phase of the Third Count. Therefore, in connection with this phase of the third count, I instruct you that if you find from the evidence beyond a reasonable doubt that the defendants did that which is charged in this second phase, you shall find the defendants guilty as to that phase of the third count.

"With respect to the second phase of the third count, I direct you that the law is as follows: Section 502 (b) of the Federal Food, Drug and Cosmetic Act provides, 'A drug shall be deemed to be

misbranded, if in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by the regulations prescribed by the administrator.' [139]

"In this connection, I further instruct you that the Secretary of Agriculture has issued no regulation exempting small packages from bearing a label containing an accurate statement of the contents in terms of weight or measure. The only exemption for compliance with this requirement is where the information as to weight or measure cannot be made to appear on the label of the drug because of insufficient label space.

"I charge you that it is not necessary for the defendants to prove their innocence, for every person accused of crime is by law presumed to be innocent; but on the contrary, it is necessary for the Government, that is, the prosecution, to prove the guilt of the defendants to a moral certainty and beyond a reasonable doubt before such defendants may be convicted by you.

"The law presumes the defendants innocent and this presumption goes with them through all the trial and remains with them until, after a full consideration of the case, you determine the question

of their guilt. This is a substantial right of the defendants and must be given them in good faith by each and every one of you.

“The charges contained in the information put upon the prosecution the burden of proving that the defendants are guilty of the offenses charged beyond a reasonable doubt. In other words, the defendants, at the outset of this trial, are presumed to be innocent and are not required to prove their innocence. In considering the testimony in the case, you must look at the testimony and view it in the light of the presumption with which the law cloaks the defendants, that is, that they are innocent and if, after considering the testimony and the presumption of innocence, there is a reasonable doubt in your mind as to their guilt, you must determine that doubt in favor of the defendants and find them not guilty.

“You are instructed that it is the law that the jury cannot [140] act upon the mere probabilities of the case, that is to say, that the mere fact that it may appear from the evidence in this case that the defendants are probably guilty of the offenses with which they are charged is not sufficient upon which to predicate a verdict of guilty. The law requires the jury to be satisfied and convinced of the guilt of the accused before conviction, and hence, permits them to act only on evidence sufficient to produce belief and conviction, or, as expressed in the law ‘upon that degree of proof which requires conviction in an unprejudiced mind.’

“I charge you that the information in this case is not evidence against the defendants and is not to be considered by you as such. It is the mere accusation and charge that has been made against the defendants. You are not to be prejudiced against the defendants because the information is on file. It is merely a step in the procedure provided by law to bring the defendants to the bar of justice to answer for the alleged crimes.

“In determining the credibility of a witness, you will bear in mind that every witness is presumed to speak the truth; but, as experience has shown and we all know, every witness does not speak the truth, and this presumption may accordingly be overcome by the manner in which he testifies, by the character of his testimony, and by other evidence in the case.

“A witness willfully false in one part of his testimony is to be distrusted in others; that is to say, you may reject the whole of the testimony of a witness who has willfully sworn falsely to any material point.

“You are instructed that if the evidence leaves it uncertain which of the two or more inferences from the facts proved is the true inference, you must adopt the inference which is most favorable to the defendants.

“I charge you that you cannot convict the defendants on [141] suspicious circumstances no matter how strong the circumstances may be.

“Counts I and II of the information raise the

issue as to whether or not Colusa Natural Oil is efficacious in the treatment of certain diseases therein mentioned. You are instructed that the treatment of such diseases does not necessarily mean or include the curing of them. Treatment includes any alleviation or mitigation of such diseases, or the giving of relief from the pain, itching, irritations, or other discomfiture incident to such diseases.

“There is nothing peculiarly different in the way a jury is to consider the proof in a criminal case from that by which men give their attention to any question depending upon the evidence presented to them. You are expected to use your good sense, consider the evidence for the purposes only for which it has been admitted, and in the light of your knowledge of the natural tendencies and propensities of human beings, resolve the facts according to deliberate and cautious judgment; and while remembering that the defendants are entitled to any reasonable doubt that may remain in your minds, remember as well that if no such doubt remains the Government is entitled to a verdict.

“Jurors are expected to agree upon a verdict where they can conscientiously do so; you are expected to consult with one another in the jury room and any juror should not hesitate to abandon his or her own view when convinced that it is erroneous.

“In determining what your verdict shall be, you are to consider only the evidence before you. Any testimony as to which an objection was sustained,

and any testimony which was ordered stricken out, must be wholly left out of account and disregarded.

“Statements of counsel are not evidence and should not be so considered. Offers to prove certain alleged facts which may have been made in your presence are not evidence, and you should [142] not take them into consideration, nor allow yourselves to be influenced in any manner thereby. Neither should you consider any evidence stricken out by the Court. And you should not draw any conclusions or inferences from any questions asked by counsel and ruled out by the Court.

“There is no dispute that the articles of drug involved in this case were shipped by the defendants in interstate commerce at the time and to the place as in the information alleged, or that the Government obtained while such shipment was in possession of the company at Mountainair, New Mexico, the bottles and jars containing the oil, capsules, and ointment in question and bearing the labeling described in the information. You may therefore consider the first essential part of the Government’s case to be established.

“The sole and remaining question for you to determine from the evidence in this case is whether or not the drugs covered by the three counts of the information were misbranded as alleged by the Government. If you are satisfied from the evidence beyond a reasonable doubt that the articles of drug bore statements in their labeling or accompanying circulars or newspaper mat that were false or



misleading in any particular in which they are alleged in the information to be false or misleading, then the drugs in those counts wherein the labeling is so false or misleading in any particular is misbranded in the manner charged by the Government, and your verdict shall be guilty as to those counts wherein such misbranding exists. If you find from the evidence that the statements in the labeling of the drugs covered by the respective counts of the information support the therapeutic claims of the defendants and are true, then the drugs covered by those counts wherein the statements on the labeling as to therapeutic claims are true, are not misbranded, your verdict should be not guilty for all or any of those counts wherein you [143] so find.”

Defendants duly excepted to the giving of the instruction set forth in the foregoing paragraph, and contended that the same was too broad in that it in effect instructed the jury that any false statement contained on the label or in the circular or newspaper mat would be sufficient to justify a conviction of the defendants. Exception.

“It is not necessary for the Government to prove that each and all of the statements of each count of the information contained on the label or in the circulars or newspaper mat are false or misleading. If the Government has established by the degree of evidence which I have explained to you, that any one material statement or representation as to the therapeutic effect of the drug upon the label

or circular or newspaper mat covered by any one count is false or misleading, then the article covered by that count is misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, and you should find the defendants guilty as to such counts in which you find the article so misbranded. But if the Government has failed to establish to your satisfaction by that degree of proof and beyond a reasonable doubt any one of the charges of misbranding in any one or more of the counts, then you should acquit the defendants as to such counts.”

Defendants duly excepted to the giving of the instruction set forth in the foregoing paragraph, and contended that the same was too broad in that it in effect instructed the jury that any false statement contained on the label or in the circular or newspaper mat would be sufficient to justify a conviction of the defendants. Exception.

“The language used on the label and in the circular and newspaper mat is to be given the meaning ordinarily conveyed by it to those to whom it is addressed. It is for you to determine whether or not such language is susceptible of the construction [144] that said drug would be efficacious in the treatment of the diseases and the accomplishment of the ends alleged in the respective counts of the information.

“The Federal Food, Drug and Cosmetic Act does not make the intent with which an unlawful shipment is made, an ingredient in the offense. The intent of the defendants is immaterial.”

Defendants duly excepted to the giving of the instruction set forth in the foregoing paragraph and contended that the instruction is erroneous and misleading in that it conveyed the impression to the jury that even if the alleged misbranding charged in the information, or any thereof, was due to inadvertence of third parties and with no knowledge or intent by defendants, the defendants would still be guilty of a crime. Exception.

“Therefore, if you find from the evidence beyond a reasonable doubt that the drugs involved in the three counts of the indictment, or any of them, were in fact misbranded in the manner alleged in the information or any count thereof, you shall find the defendants guilty as charged in those counts wherein you find the drugs were misbranded, regardless of the intent in the minds of the defendants.”

Defendants duly excepted to the giving of the instruction set forth in the foregoing paragraph, and contended that it is erroneous as to the element of “intent” for the same reasons as the earlier instructions on said subject. Exception.

“If, after hearing the evidence in this case, you reach the conclusion that the drugs or products involved here were harmless, that does not excuse the defendants, if you find that they placed statements upon said drugs which were false, concerning the curative and therapeutic effects of such products, as the danger and injury to the public from representations of this type is in that it induces persons frequently to rely in serious cases upon

preparations without healing virtue when, but for this [145] reliance, they would secure proper advice and treatment for the ills which affect them.”

Defendants duly excepted to the giving of the instruction set forth in the foregoing paragraph, and contended that it is too broad in that it conveyed to the jury the idea that if any false statement accompanied said drugs, the defendants should be convicted, instead of limiting the charge to the alleged false statement specifically charged in the information. Exception.

“In discharging your duty as judges of the facts in this case, you may take into account the intelligence or lack of intelligence displayed by any witness, the opportunity or lack of opportunity on the part of any witness to know or be informed about the matters upon which he testifies. You may also take into account the interest any witness may have in the outcome of the case, and weigh his testimony accordingly.

“Ordinarily, in the trial of cases in court, witnesses are confined in their testimony to facts within their personal knowledge and they are not permitted to draw conclusions or express opinions. That is the general rule, but there is an exception to that rule where the points in issue arise out of a particular science or art concerning which there are trained minds who have special knowledge, learning or schooling in that particular field. Such persons are called experts and because of that special training or learning they are entitled to express

opinions concerning the matters at issue. You will, of course, weigh and evaluate the testimony of the expert witnesses in this case precisely as you weigh the testimony of any non-expert witnesses; that is to say, you will take into account the probability and reasonableness of the matters to which they have testified, the schooling of the persons giving it, the learning that he has in his profession, or the want of it, and the breadth of his experience in the field which would enable him to arrive at a correct conclusion. In [146] other words, his testimony should be given such weight as you believe it is entitled to receive.

“Although as men and women you may sympathize with those who suffer, yet as honest men and women, bound by oath to administer justice according to the law and the evidence, you should not act on your sympathies without proof. Mercy does not belong to you. No question of mercy, sentiment, or anything else, resides with you, except the question of whether or not you believe from the evidence and beyond a reasonable doubt that the defendants are guilty. Duty demands it and law requires that you must be just to the defendants and equally just to the Government. As upright jurors, charged under your oath with the responsible duty of assisting the Court in the administration of justice, you will put aside all sympathy and sentiment, all question of public approval or disapproval, and look steadfastly to the law and the evidence in the case and return into court such a verdict as is warranted by the law and the evidence.

“You are instructed that if the Judge has said anything or done anything which has suggested to you that he is inclined to favor the claims or position of either party, you will not suffer yourselves to be influenced by any such suggestion.

“The verdict to be rendered must represent the considered judgment of each juror.

“In order to return a verdict it is necessary that each juror agree thereto. Your verdict must be unanimous.

“When you return to your jury room to deliberate, you will select one of your number as foreman and he will sign your verdict for you when it has been agreed upon. You will then return into court with the verdict and your foreman will represent you as your spokesman in the further conduct of this case in this court.

“That, ladies and gentlemen of the jury, concludes the instructions of the Court.” [147]

Thereupon, and in the presence of the jury, and before its retirement, defendants duly excepted to the instructions as specifically shown hereinabove, and in addition duly excepted to the refusal of the Court to give certain instructions previously submitted and requested by defendants, as follows:

Defendants' Proposed Instruction No. 21, which is as follows:

“To constitute a party guilty of crime, the evidence must show intentional participation in the attempt to violate the statutes in question.”

Defendants' Proposed Instruction No. 22, which is as follows:

“There must be an intentional participation in the transaction with a view to the common design and purpose, before a party can be guilty of crime.”

Defendants' Proposed Instruction No. 29, which is as follows:

“In this case Mr. Colgrove is jointly charged with the defendant corporation in the information. However, you are instructed that it is the law that an officer of a corporation—and here Mr. Colgrove is President of the corporation—cannot be held liable unless he personally knowingly and actually participates in the commission of the acts alleged to be unlawful. An officer of a corporation is not criminally liable for the acts of the corporation performed by other officers or agents. Therefore, unless you find that Mr. Colgrove did know that the jars of ointment referred to in the third count of the information had not been properly labeled, but that the jars of ointment with the incomplete label had been shipped by clerks and employees of the corporation without Mr. Colgrove's knowledge, then and in that event you will find Mr. Colgrove personally not guilty. *State v. Parker*, 151 Atl. at 332; *Fletcher Cyc. Corpn.* Vol. 3, Sec. 1349.”

It was thereupon stipulated between the respective parties that defendants had duly excepted to the various instructions specifically mentioned hereinabove as having been excepted to, [148] and to the rulings of the Court in connection therewith.

Thereupon, at the hour of 2:15 p.m. of said day, June 30, 1942, the jury retired for deliberation, and and at 2:55 P.M. of said day, the jury returned to the courtroom and delivered their verdict as follows:

“No. 27554-R

“We, the jury, find as to the defendants at the bar as follows:

The Empire Oil and Gas Corporation, a corporation,

Guilty on the first count,

Guilty on the second count,

Guilty on the third count.

Chester Walker Colgrove, trading as Colusa Products Company,

Guilty on the first count,

Guilty on the second count,

Guilty on the third count.

P. N. DOWNING,

Foreman”

Thereafter, and on July 8, 1942, each of the defendants duly moved the Court for a new trial, said motion being as follows:

[Title of Court and Cause.]

“MOTION FOR NEW TRIAL

“Now come the defendants in the above entitled case, and respectfully move the Court to grant a new trial of said cause, and as ground therefore, respectfully show as follows:



“1. That on the trial the Court admitted improper evidence against the defendants, over the objection of defendants, which rulings were duly excepted to by the defendants.

“2. That on the trial the Court refused to admit evidence and testimony offered by defendants which was competent and relevant to the issues in this case, to which rulings defendants duly excepted.

“3. That the verdict under the first count is contrary to the evidence.

“4. That the verdict under the second count is contrary to the evidence. [149]

“5. That the verdict under the third count is contrary to the evidence.

“6. That the verdict under the first count is contrary to the law.

“7. That the verdict under the second count is contrary to the law.

“8. That the verdict under the third count is contrary to the law.

“9. That the verdict should have been for the defendants as to each of said counts.

“10. That the Court erred in denying defendants' motion for a directed verdict of not guilty under the first count.

“11. That the Court erred in denying defendants' motion for a directed verdict of not guilty under the second count.

“12. That the Court erred in denying defendants' motion for a directed verdict of not guilty under the third count.

“13. That the Court erred in denying defend-

ants' motion that plaintiff be compelled to elect between the two separate alleged offenses set forth in the third count.

"14. That the Court erred upon the trial of said cause in deciding questions of law arising during the course of the trial, which errors were duly excepted to.

"Dated: July 8, 1942.

WALTER M. GLEASON

MORGAN J. DOYLE

WILLIAM B. ACTON

Attorneys for Defendants.

"Service of the foregoing Motion for New Trial, and copy thereof, this 8th day of July, 1942, is hereby acknowledged.

FRANK J. HENNESSY,

U. S. Attorney

By A. J. ZIRPOLI"

Said motion was then argued and submitted, and thereafter, on said date, the Court denied said motion for a new trial, to which ruling an exception was duly taken by each defendant. Exception. [150]

Thereupon, on said day, each defendant duly moved the Court in arrest of judgment, which motion was as follows:

[Title of Court and Cause.]

"MOTION OF DEFENDANTS IN ARREST  
OF JUDGMENT

"Now comes the defendants in the above entitled proceeding, and respectfully move the above entitled

Court in arrest of judgment, and that judgment be arrested and not entered herein, and as grounds of said motion, state as follows:

I

“That the information filed in this case does not state facts sufficient to constitute a public offense by these defendants, or otherwise.

II

“That the first count in the information filed in this case does not state facts sufficient to constitute a public offense by these defendants, or otherwise.

III

“That the second count in the information filed in this case does not state facts sufficient to constitute a public offense by these defendants, or otherwise.

IV

“That the third count in the information filed in this case does not state facts sufficient to constitute a public offense by these defendants, or otherwise.

V

“That the third count purports and attempts to state two separate and distinct public offenses, to-wit, an alleged offense consisting of the alleged failure to state on the labels of the jars or packages of ointment referred to in said count the quantity of ointment contained therein; and a separate and distinct offense consisting of the alleged mis-

branding of said ointment by the alleged making of false statements concerning the therapeutic efficacy of said ointment. [151]

“That the Court erred in denying defendants’ motion to compel plaintiff to elect as between said two distinct alleged offenses set forth in said third count.

## VI

“That said information was not verified.

“Wherefore, defendants pray that this said motion in arrest of judgment be granted as to each of said defendants.

“Dated July 8, 1942.

WALTER M. GLEASON

MORGAN J. DOYLE

WILLIAM B. ACTON

Attorneys for Defendants

“Service of the foregoing Motion of Defendants in Arrest of Judgment, and copy thereof, this 8th day of July, 1942, is hereby acknowledged.

FRANK J. HENNESSY,

U. S. Attorney

By A. J. ZIRPOLI”

Thereupon, on said day, the Court denied said motion in arrest of judgment, to which ruling an exception was duly taken by each defendant. Exception.

Thereafter, and on July 8, 1942, the Court imposed judgment and sentence upon the defendants as follows:

As to the defendant Chester Walker Colgrove, the Court sentenced said defendant to pay a fine of \$500.00 (or in the alternative serve six months in jail) as to each of the three counts in the information.

Said defendant duly excepted to the rendering of said judgment and sentence and each and all portions thereof. Exception.

As to the defendant Empire Oil and Gas Corporation, the Court imposed a fine of \$1.00 as to each of the said three counts.

Said defendant duly excepted to the rendering of said judgment and each and all portions thereof. Exception. [152]

Thereafter, and on July 9, 1942, said defendants paid into escrow, with the Clerk of said United States District Court, said total fines provided for in and by said sentence and judgment of said Court aforementioned, under and pursuant to an order of said Court, duly made on July 9, 1942, which order provided that said fines be held in escrow pending the appeal of said defendants from said judgment.

Said defendants and each thereof duly filed in said cause their notices of appeal on the 9th day of July, 1942.

Thereafter and on the 20th day of July, 1942, the Court made its order that defendants and appellants have to and including September 15, 1942, within which to file their assignment of errors and proposed bill of exceptions.

Thereafter, and on the 10th day of September, 1942, the parties duly stipulated that the time within which the proposed bill of exceptions and assignment of errors of the defendants and appellants be filed, be extended to and including September 30, 1942, and thereupon the Court duly made its order extending said time as thus stipulated. That in and by its said last named order, said Court did further provide that the appellee should have to and including October 15, 1942, within which to file its proposed amendments, and that the time for the settlement of said bill of exceptions by the Court be extended to and including October 30, 1942.

Thereafter, and on September 29, 1942, an order was duly entered of record, pursuant to the stipulation of the parties hereto, that the certain original documents and exhibits offered in evidence in said cause, which are not herein reproduced, be considered as incorporated and as a part of the bill of exceptions in this cause as though actually a physical part thereof, and that the same be separately certified by the Clerk of this Court to the United States Circuit Court of Appeals for the Ninth Circuit. [153]

Accordingly, said exhibits which are not set forth in this bill of exceptions, the same being separately certified by the Clerk of this Court to the United States Circuit Court of Appeals, in and for the Ninth Circuit of the United States, are hereby referred to and incorporated and included herein,

and made a part hereof, the same as if actually herein set out in full.

Wherefore, said defendants and appellants hereby tender, with said original exhibits aforementioned, this as their bill of exceptions, which said proposed bill of exceptions is all of the evidence received in said cause, and respectfully pray that the same may be allowed, settled and signed by the Judge of this Court, as provided by law and the rules of this Court, this said Bill of Exceptions being tendered to said Court this 29th day of September, 1942, which is within the time heretofore granted by the Court pursuant to the rules of Court and the statute appertaining thereto for the presenting, signing and filing of said bill of exceptions herein.

MORGAN J. DOYLE

W. B. ACTON

WALTER M. GLEASON

Attorneys for Defendants and  
Appellants

It is stipulated that the foregoing Engrossed Bill of Exceptions may be settled as presented.

THOS. C. LYNCH

Service and receipt of copy of the within proposed bill of exceptions this 28th day of September, 1942 is hereby acknowledged.

FRANK J. HENNESSY,

United States Attorney

By A. J. ZIRPOLI,

Attorneys for Plaintiff and  
Appellee

The foregoing Bill of Exceptions is hereby settled, and allowed this 12th day of November, 1942, which is within the time heretofore fixed (to-and-on or before November 15, 1942) for the settlement of said Bill.

MICHAEL J. ROCHE,  
United States District Judge

[Endorsed] Filed Nov. 12, 1942. [154]

---

[Title of District Court and Cause]

VERDICT

We, the Jury, find as to the defendants at the bar as follows:

Empire Oil and Gas Corporation, a corporation, Guilty on First Count, Guilty on Second Count, Guilty on Third Count;

Chester Walker Colgrove, trading as Colusa Products Company, Guilty on First Count, Guilty on Second Count, Guilty on Third Count.

P. M. DOWNING

Foreman.

[Endorsed]: Filed June 30, 1942. [155]

---

[Title of District Court and Cause]

MOTION FOR NEW TRIAL

Now come the defendants in the above entitled case, and respectfully move the Court to grant



a new trial of said cause, and as ground therefor, respectfully show as follows:

1. That on the trial the Court admitted improper evidence against the defendants, over the objection of defendants, which rulings were duly excepted to by the defendants.

2. That on the trial the Court refused to admit evidence and testimony offered by defendants which was competent and relevant to the issues in this case, to which rulings defendants duly excepted.

3. That the verdict under the first count is contrary to the evidence.

4. That the verdict under the second count is contrary to the evidence. [156]

5. That the verdict under the third count is contrary to the evidence.

6. That the verdict under the first count is contrary to the law.

7. That the verdict under the second count is contrary to the law.

8. That the verdict under the third count is contrary to the law.

9. That the verdict should have been for the defendants as to each of said counts.

10. That the Court erred in denying defendants' motion for a directed verdict of not guilty under the first count.

11. That the Court erred in denying defendants' motion for a directed verdict of not guilty under the second count.

12. That the Court erred in denying defendants' motion for a directed verdict of not guilty under the third count.

13. That the Court erred in denying defendants' motion that plaintiff be compelled to elect between the two separate alleged offenses set forth in the third count.

14. That the Court erred upon the trial of said cause in deciding questions of law arising during the course of the trial, which errors were duly excepted to.

Dated: July 2, 1942.

MORGAN J. DOYLE  
WILLIAM B. ACTON  
WALTER M. GLEASON

Attorneys for Defendants

Service of the foregoing Motion for New Trial, and copy thereof, this 8th day of July, 1942, is hereby acknowledged.

FRANK J. HENNESSY,  
U. S. Attorney

By A. J. ZIRPOLI

[Endorsed]: Filed July 3, 1942. [156-A]

---

[Title of District Court and Cause.]

MOTION OF DEFENDANTS IN  
ARREST OF JUDGMENT

Now come the defendants in the above entitled proceeding, and respectfully move the above enti-

tled Court in arrest of judgment, and that judgment be arrested and not entered herein, and as grounds of said motion, state as follows:

I

That the information filed in this case does not state facts sufficient to constitute a public offense by these defendants, or otherwise.

II

That the first count in the information filed in this case does not state facts sufficient to constitute a public offense by these defendants, or otherwise. [157]

III

That the second count in the information filed in this case does not state facts sufficient to constitute a public offense by these defendants, or otherwise.

IV

That the third count in the information filed in this case does not state facts sufficient to constitute a public offense by these defendants, or otherwise.

V

That the third count purports and attempts to state two separate and distinct public offenses, to-wit, an alleged offense consisting of the alleged failure to state on the labels of the jars or packages of ointment referred to in said count the quantity of ointment contained therein; and a separate and distinct offense consisting of the al-

leged misbranding of said ointment by the alleged making of false statements concerning the therapeutic efficacy of said ointment.

That the Court erred in denying defendants' motion to compel plaintiff to elect as between said two distinct alleged offenses set forth in said third count.

## VI

That said information was not verified.

Wherefore, defendants pray that this said motion in arrest of judgment be granted as to each of said defendants.

Dated: July 2, 1942.

MORGAN J. DOYLE  
WILLIAM B. ACTON  
WALTER M. GLEASON

Attorneys for Defendants

Service of the foregoing Motion of Defendants in Arrest of Judgment, and copy thereof, this 3rd day of July, 1942 is hereby acknowledged.

FRANK J. HENNESSY,

U. S. Attorney

By A. J. ZIRPOLI

[Endorsed]: Filed Jul. 3, 1942. [157-A]

---

District Court of the United States, Northern  
District of California, Southern Division

At a Stated Term of the Southern Division of  
the United States District Court for the Northern

District of California, held at the Court Room thereof, in the City and County of San Francisco, on Wednesday the 8th day of July, in the year of our Lord one thousand nine hundred and forty-two.

Present: The Honorable Michael J. Roche, District Judge.

No. 27554-R

UNITED STATES OF AMERICA,

vs.

EMPIRE OIL AND GAS CORPORATION, a corporation, and CHESTER WALKER COLGROVE, trading as Colusa Products Company

### MINUTE ORDER

Denying Motion for New Trial and  
Motion in Arrest of Judgment

This case came on this day for the pronouncing of judgment, for hearing on the motion for new trial, and motion in arrest of judgment. The defendants were present with Morgan J. Doyle, Walter Gleason and William B. Acton, Esqrs., their Attorneys. A. J. Zirpoli, Esq., Assistant United States Attorney, was present for and on behalf of the United States. After argument by Mr. Acton and Mr. Gleason, on behalf of the defendants, and by Mr. Zirpoli on behalf of the United States, it is ordered that the said motion for a new trial be and the same is hereby denied, and defendants

allowed an exception to the ruling of the Court; and it is ordered that the motion in arrest of judgment be and the same is hereby denied, and defendants allowed an exception to the ruling of the Court. The defendants were called for judgment. After hearing the Attorneys, and the defendants having been now asked whether they have anything to say why [158] judgment should not be pronounced against them, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court \* \* \* [159]

---

In the Southern Division of the United States  
District Court for the Northern District of  
California.

No. 27554-R

Criminal Information in Three Counts for Viola-  
tion of Federal Food, Drug, and Cosmetic Act  
(52 Statutes at Large, 1040; 21 USC 331(a),  
352(a), (b)(2),)

UNITED STATES OF AMERICA

vs.

EMPIRE OIL AND GAS CORPORATION, a  
corporation.

### JUDGMENT

On this 8th day of July, 1942, came the United States Attorney, and the defendant, Empire Oil &

Gas Corporation, a corpn. appearing thru Chester W. Colgrove, its President and by counsel and,

The defendant having been convicted on verdict of guilty of the offense charged in the Information in the above-entitled cause, to-wit:

Federal Food, Drug and Cosmetic Act (52 Statutes at Large, 1040; 21 USC 331(a), 352 (a), (b)(2),)

and the defendant being now asked whether it has anything to say before the judgment is pronounced against it and no sufficient cause being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant be and it hereby is sentenced to pay a fine to the United States of America in the sum of One and No/100 Dollar (\$1.00) on each of Counts I, II and III, making a total of Three and No/100 Dollars (\$3.00).

**MICHAEL J. ROCHE**

United States District Judge

Examined by:

**A. J. ZIRPOLI**

Assistant United States Attorney.

Entered in Vol. 32 Judg. and Decrees at Page 862.

[Endorsed]: Filed July 8, 1942. [160]

In the Southern Division of the United States  
District Court for the Northern District of  
California

No. 27554-R

Criminal Information in Three Counts for Viola-  
tion of Federal Food, Drug, and Cosmetic Act  
(52 Statutes at Large, 1040; 21 USC 331(a),  
352(a), (b)(2),)

UNITED STATES OF AMERICA

vs.

CHESTER WALKER COLGROVE, trading as  
Colusa Products Company.

### JUDGMENT

On this 8th day of July, 1942, came the United States Attorney, and the defendant, Chester Walker Colgrove, appearing in proper person, and by counsel, and,

The defendant having been convicted on verdict of guilty of the offense charged in the Information in the above-entitled cause, to-wit:

Federal Food, Drug, and Cosmetic Act (52 Statutes at Large, 1040; 21 USC 331(a), 352 (a), (b)(2),)

and the defendant being now asked whether he has anything to say before judgment is pronounced against him and no sufficient cause being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant be and he hereby is sentenced to pay a fine to the



United States of America in the sum of Five Hundred and No/100 Dollars (\$500.00) and that said defendant be imprisoned in a Jail to be designated by the Attorney General or his authorized representative for the period of Six (6) Months on Count I of the Information; that he pay a Fine to the United States of America in the sum of Five Hundred and No/100 Dollars (\$500.00) and that said defendant be imprisoned in a Jail to be designated by the Attorney General or his authorized representative for the period of Six (6) Months on Count II of the Information; that he pay a Fine to the United States of America in the sum of Five Hundred and No/100 Dollars (\$500.00) and that said defendant be imprisoned in a Jail to be designated by the Attorney General or his authorized representative for the period of Six (6) Months on Count III of the Information; It Is Further Ordered that the periods of imprisonment imposed on said defendant, Chester Walker Colgrove on Count I, Count II and Count III commence and run concurrently; It Is Further Ordered that the defendant Chester Walker Colgrove, upon the payment of the said Fines imposed on him, on Count I, on Count II, and on Count III, be discharged from imprisonment on said Counts.

It Is Further Ordered that the Clerk deliver certified copy of this Judgment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

**MICHAEL J. ROCHE**

United States District Judge

Examined by:

A. J. ZIRPOLI

Assistant United States Attorney.

Entered in Vol. 32 Judg. and Decrees at Page  
863.

[Endorsed]: Filed July 8, 1942. [161]

---

In the District Court of the United States Within  
and for the Northern District of California,  
Southern Division.

March Term, 1942

No. 27554-R

UNITED STATES OF AMERICA

v.

EMPIRE OIL AND GAS CORPORATION, a  
corporation, and CHESTER WALKER COL-  
GROVE, trading as Colusa Products Company

NOTICE OF APPEAL OF EMPIRE OIL  
AND GAS CORPORATION

Name and Address of Appellant:

Empire Oil and Gas Corporation, a corporation,  
503 Mercantile Bldg., Shattuck and Center Streets,  
Berkeley, California.

Names and Addresses of Appellant's Attorneys:

Walter M. Gleason and Morgan J. Doyle, 2314  
Shell Building, San Francisco, California, and  
William B. Acton, 486 California Street, San  
Francisco, California.

Offense:

Alleged violation of Federal Food, Drug and Cosmetic Act (52 Statutes at Large, 1040; 21 U.S.C. 331(a), 352(a)). Information contains three counts. First charges shipment of misbranded oil in interstate commerce. Second Count charges shipment of misbranded capsules in interstate commerce. Third Count charges shipment of misbranded ointment in interstate commerce, all in violation of said statute aforementioned. [162]

Date of Judgment:

July 7, 1942.

Brief Description of Judgment or Sentence:

\$1.00 Fine, First Count;

\$1.00 Fine, Second Count;

\$1.00 Fine, Third Count.

Name of Prison Where Now Confined if Not on Bail:

-----

The above named appellant hereby appeals to the United States Circuit Court of Appeals, for the Ninth Circuit, from the judgment above mentioned on the grounds set forth below.

Dated: July 7, 1942.

EMPIRE OIL AND GAS CORPORATION,

[Seal] By C. W. COLGROVE  
Its President

By H. C. COLGROVE  
Its Secretary  
Appellant

## GROUNDS OF APPEAL

(1) That the First Count in the information filed in this case does not state facts sufficient to constitute an offense by appellant against the laws of the United States of America.

(2) That the First Count in the information filed in this case does not state facts sufficient to constitute an offense by appellant under the Federal Food, Drug and Cosmetic Act.

(3) That the Second Count in the information filed in this case does not state facts sufficient to constitute an offense by appellant against the laws of the United States of America.

(4) That the Second Count in the information filed in this case does not state facts sufficient to constitute an offense by appellant under the Federal Food, Drug and Cosmetic Act.

(5) That the Third Count in the information filed in [163] this case does not state facts sufficient to constitute an offense by appellant against the laws of the United States of America.

(6) That the Third Count in the information filed in this case does not state facts sufficient to constitute an offense by appellant under the Federal Food, Drug and Cosmetic Act.

(7) That the Third Count attempts and purports to allege two separate and distinct offenses in one count, and the Court erred in denying appellant's motion to compel the prosecution to elect as to which of said alleged offenses it would proceed under and submit to the jury.

(8) That the evidence is insufficient as a matter of law to sustain the verdict against appellant on the First Count.

(9) That the evidence is insufficient as a matter of law to sustain the verdict against appellant on the Second Count.

(10) That the evidence is insufficient as a matter of law to sustain the verdict against appellant on the Third Count.

(11) That the verdict on the First Count is against the law.

(12) That the verdict on the Second Count is against the law.

(13) That the verdict on the Third Count is against the law.

(14) That the Court erred in denying appellant's motion for a directed verdict of not guilty on the First Count.

(15) That the Court erred in denying appellant's motion for a directed verdict of not guilty on the Second Count.

(16) That the Court erred in denying appellant's motion for a directed verdict of not guilty on the Third Count.

(17) That the Court erred in denying appellant's motion for a new trial.

(18) That the Court erred in denying appellant's motion in arrest of judgment. [164]

(19) That the Court committed various errors at the trial of this case in admission, over the objection of appellant, of evidence and testimony offered by the government, and in the rejection of evidence and testimony offered by defendants, all of which said errors will be particularly specified and pointed out in the Assignment of Errors to be filed hereafter. Included among these errors, and as some of the prejudicial errors of the Court which appellant will particularly assign and specify hereafter in the Assignment of Errors, are the following:

(a) The Court erred in refusing to permit Dr. Von Hoover, one of appellant's expert witnesses, to give his opinion as to certain of the technical points in issue in this case, and as to which he was fully qualified.

(b) The Court erred in refusing to permit Dr. Von Hoover to testify, from the original memorandum prepared by him at the conclusion of his extensive clinical tests made of the products involved in this case to determine their therapeutic value and properties, as to the detailed facts and data learned, observed and compiled by him in the making of said tests.

(c) The Court erred in holding that the testimony of this witness, Dr. Von Hoover, would be restricted and limited to what he actually saw and observed, and in precluding and preventing him from stating what skin diseases certain clinical patients were suffering from.

(d) The Court erred in making various remarks

in connection with the testimony of Dr. Von Hoover which tended to, and did, create in the minds of the jury the impression that the testimony of this witness was of little value and entitled to little weight, when in fact this witness was fully qualified as a scientist, and by his training and practice of his profession as a pharmacologist to testify as an expert on the subject involved, and actually made detailed and exhaustive tests with respect to [165] the very products involved in this case and the very issues involved herein.

(e) That in view of the issues raised by the information in this case, the Court erred in refusing to admit in evidence the voluntary testimonials received by the defendants, and upon the basis of which they made certain statements, quoted in their advertising matter and in the information, and which statements the information charges to be false.

(f) That the Court erred in ruling that the defendants would not be permitted to show that the omission, from the jar of ointment covered by the Third Count, of the weight designation, viz. "¾ ounce" was entirely inadvertent, and was due to an inadvertence of the printing company which printed these labels; and that said company inadvertently, in printing said labels, failed to comply with the written request and instructions of appellant that this designation, "¾ ounce" be printed on the label as per the copy submitted.

(g) The Court erred in holding that the intent, belief or knowledge of the defendants in connec-

tion with the aforementioned omission from the label on the jar of ointment covered by Count Three was and is immaterial.

(h) The Court erred in permitting, over objection of appellant, various witnesses for the government to testify as to the effect of the application of the Colusa Natural Oil to the human skin without a proper foundation being laid to show that such witnesses had made the necessary tests to enable them to testify as to such facts.

(i) The Court erred in permitting, over objection of appellant, the government to ask and receive answers to various leading questions covering important matters in issue in this case, all to be particularly specified in the Assignment of Errors to be filed hereafter. [166]

(j) The Court erred in refusing to admit in evidence various documentary evidence and exhibits offered by appellant.

(k) The Court erred in rejecting various offers of proof made by appellant with respect to material issues in this case, including the offer to prove various facts concerning the voluntary testimonials received by defendant in relation to the money back guaranty under which these products were sold, all of said rulings to be particularly specified hereafter in the Assignment of Errors.

(l) The Court erred in refusing to permit defendant Colgrove to testify as to on what he based various assertions contained in the advertising matter and quoted in the information, and which the



government claimed and alleged to be false, including the statement to the effect that various users of these products had credited these Colusa products with excellent results in the treatment of certain skin diseases, and also the statement that radium emanations have certain characteristics, as quoted in the newspaper mat referred to in said information.

(m) The Court erred in permitting the government to cross-examine defendant Colgrove as to certain matters not at all relevant to the issues in this case, and not at all pertinent to the matters covered on his direct examination, to-wit, the various businesses and activities in which this defendant had previously been engaged.

(n) The Court erred in permitting the government to cross-examine defendant Colgrove as to certain letters received in evidence and marked as Government's Exhibit 13.

(20) The Court erred in giving certain instructions to the jury as requested by the plaintiff, and objected to by appellant, all to be particularly specified hereafter in the Assignment of Errors. [167]

(21) The Court erred in refusing to give certain instructions to the jury requested by appellant.

Dated: July 7, 1942.

MORGAN J. DOYLE,  
WALTER M. GLEASON  
WILLIAM B. ACTON

Attorneys for Appellant.

Service and receipt of copy of the foregoing Notice of Appeal is hereby acknowledged this 8th day of July, 1942.

FRANK J. HENNESSY,  
United States Attorney.

By A. J. ZIRPOLI.

[Endorsed]: Filed Jul. 9, 1942. [168]

---

[Title of District Court and Cause.]

NOTICE OF APPEAL OF  
CHESTER WALKER COLGROVE

Name and address of Appellant: Chester Walker Colgrove, 2535 Le Conte, Berkeley, California.

Names and Addresses of Appellant's Attorneys: Walter M. Gleason and Morgan J. Doyle, 2314 Shell Building, San Francisco, California, and William B. Acton, 486 California Street, San Francisco, California.

Offense: Alleged violation of Federal Food, Drug and Cosmetic Act (52 Statutes at Large, 1040; 21 U.S.C. 331 (a), 352 (a) ). Information contains three counts. First Count charges shipment of misbranded oil in interstate commerce. Second Count charges shipment of misbranded capsules in interstate commerce. Third Count charges shipment of [169] misbranded ointment in interstate commerce, all in violation of said statute aforementioned.

Date of Judgment: July 7, 1942.

Brief Description of Judgment or Sentence: \$500

Fine or Six Months in jail, First Count; \$500 Fine or Six Months in jail, Second Count; \$500 Fine or Six Months in jail, Third Count.

Name of Prison Where Now Confined if Not on Bail: Bail.

The above named appellant hereby appeals to the United States Circuit Court of Appeals, for the Ninth Circuit, from the judgment above mentioned on the grounds set forth below.

Dated: July 7, 1942.

CHESTER WALKER COLGROVE  
Appellant

#### GROUND OF APPEAL

(1) That the First Count in the information filed in this case does not state facts sufficient to constitute an offense by appellant against the laws of the United States of America.

(2) That the First Count in the information filed in this case does not state facts sufficient to constitute an offense by appellant under the Federal Food, Drug and Cosmetic Act.

(3) That the Second Count in the information filed in this case does not state facts sufficient to constitute an offense by appellant against the laws of the United States of America.

(4) That the Second Count in the information filed in this case does not state facts sufficient to constitute an offense by appellant under the Federal Food, Drug and Cosmetic Act.

(5) That the Third Count in the information filed in this case does not state facts sufficient to constitute an offense [170] by appellant against the laws of the United States of America.

(6) That the Third Count in the information filed in this case does not state facts sufficient to constitute an offense by appellant under the Federal Food, Drug and Cosmetic Act.

(7) That the Third Count attempts and purports to allege two separate and distinct offenses in one count, and the Court erred in denying appellant's motion to compel the prosecution to elect as to which of said alleged offenses it would proceed under and submit to the jury.

(8) That the evidence is insufficient as a matter of law to sustain the verdict against appellant on the First Count.

(9) That the evidence is insufficient as a matter of law to sustain the verdict against appellant on the Second Count.

(10) That the evidence is insufficient as a matter of law to sustain the verdict against appellant on the Third Count.

(11) That the verdict on the First Count is against the law.

(12) That the verdict on the Second Count is against the law.

(13) That the verdict on the Third Count is against the law.

(14) That the Court erred in denying appellant's motion for a directed verdict of not guilty on the First Count.

(15) That the Court erred in denying appellant's motion for a directed verdict of not guilty on the Second Count.

(16) That the Court erred in denying appellant's motion for a directed verdict of not guilty on the Third Count.

(17) That the Court erred in denying appellant's motion for a new trial.

(18) That the Court erred in denying appellant's motion in arrest of judgment.

(19) That the Court committed various errors at the trial [171] of this case in admission, over the objection of appellant, of evidence and testimony offered by the government, and in the rejection of evidence and testimony offered by defendants, all of which said errors will be particularly specified and pointed out in the Assignment of Errors to be filed hereafter. Included among these errors, and as some of the prejudicial errors of the Court which appellant will particularly assign and specify hereafter in the Assignment of Errors, are the following:

(a) The Court erred in refusing to permit Dr. Von Hoover, one of appellant's expert witnesses, to give his opinion as to certain of the technical points in issue in this case, and as to which he was fully qualified.

(b) The Court erred in refusing to permit Dr. Von Hoover to testify, from the original memorandum prepared by him at the conclusion of his extensive clinical tests made of the products in-

volved in this case to determine their therapeutic value and properties, as to the detailed facts and data learned, observed and compiled by him in the making of said tests.

(c) The Court erred in holding that the testimony of this witness, Dr. Von Hoover, would be restricted and limited to what he actually saw and observed, and in precluding and preventing him from stating what skin diseases certain clinical patients were suffering from.

(d) The Court erred in making various remarks in connection with the testimony of Dr. Von Hoover which tended to, and did, create in the minds of the jury the impression that the testimony of this witness was of little value and entitled to little weight, when in fact this witness was fully qualified as a scientist, and by his training and practice of his profession as a pharmacologist to testify as an expert on the subject involved, and actually made detailed and exhaustive tests with respect to the very products involved in this case and the very issues involved herein. [172]

(e) That in view of the issues raised by the information in this case, the Court erred in refusing to admit in evidence the voluntary testimonials received by the defendants, and upon the basis of which they made certain statements, quoted in their advertising matter and in the information, and which statements the information charges to be false.

(f) That the Court erred in ruling that the defendants would not be permitted to show that the omission, from the jar of ointment covered by the Third Count, of the weight designation, viz. "¾ ounce" was entirely inadvertent, and was due to an inadvertence of the printing company which printed these labels; and that said company, in printing said labels, inadvertently failed to comply with the written request and instructions of appellant that this designation, "¾ ounce" be printed on the label as per the copy submitted.

(g) The Court erred in holding that the intent, belief or knowledge of the defendants in connection with the aforementioned omission from the label on the jar of ointment covered by Count Three was and is immaterial.

(h) The Court erred in permitting, over objection of appellant, various witnesses for the government to testify as to the effect of the application of the Colusa Natural Oil to the human skin without a proper foundation being laid to show that such witnesses had made the necessary tests to enable them to testify as to such facts.

(i) The Court erred in permitting, over objection of appellant, the government to ask and receive answers to various leading questions covering important matters in issue in this case, all to be particularly specified in the Assignment of Errors to be filed hereafter.

(j) The Court erred in refusing to admit in evi-

dence various documentary evidence and exhibits offered by appellant. [173]

(k) The Court erred in rejecting various offers of proof made by appellant with respect to material issues in this case, including the offer to prove various facts concerning the voluntary testimonials received by defendant in relation to the money back guaranty under which these products were sold, all of said rulings to be particularly specified hereafter in the Assignment of Errors.

(l) The Court erred in refusing to permit defendant Colgrove to testify as to on what he based various assertions contained in the advertising matter and quoted in the information, and which the government claimed and alleged to be false, including the statement to the effect that various users of these products had credited these Colusa products with excellent results in the treatment of certain skin diseases, and also the statement that radium emanations have certain characteristics, as quoted in the newspaper mat referred to in said information.

(m) The Court erred in permitting the government to cross-examine defendant Colgrove as to certain matters not at all relevant to the issues in this case, and not at all pertinent to the matters covered on his direct examination, to-wit, the various businesses and activities in which this defendant had previously been engaged.

(n) The Court erred in permitting the government to cross-examine defendant Colgrove as to



certain letters received in evidence and marked as Government's Exhibit 13.

(20) The Court erred in giving certain instructions to the jury as requested by the plaintiff, and objected to by appellant, all to be particularly specified hereafter in the Assignment of Errors.

(21) The Court erred in refusing to give certain instructions to the jury requested by appellant.

Dated: July 7, 1942.

MORGAN J. DOYLE,  
WILLIAM M. GLEASON  
WILLIAM B. ACTON

Attorneys for Appellant.

(Admission of Service)

[Endorsed]: Filed Jul. 9, 1942. [174]

---

[Title of District Court and Cause.]

ORDER AUTHORIZING DEPOSIT OF FINE  
IN ESCROW PENDING APPEAL

Whereas, on July 7, 1942, judgment was rendered in the above entitled cause, imposing certain fines on the defendants in said cause, and in the alternative, providing for certain jail sentences in the event said fines were not paid; and

Whereas, said defendants have filed their Notice of Appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, from said judgment;

Now, Therefore, It Is Hereby Ordered that exe-

cution of the judgment of conviction and sentence against the defendants Empire Oil and Gas Corporation, a corporation, and Chester Walker Colgrove, trading as Colusa Products Company, and each of them, be and the same [175] is hereby stayed pending appeal and until the final determination of the appeals taken by said defendants and until the judgment and sentences have become final; such stay being granted on the terms and condition that there is required to be deposited with the Clerk of this Court in escrow for and in behalf of each of said appealing defendants the amount of the fine such defendant is sentenced to pay, such deposit in escrow to be made under and subject to the provisions of Rule V. of the Rules of Procedure in Criminal Cases, and the stay of execution to be immediately effective upon the making of such deposit.

Dated: July 9, 1942.

MICHAEL J. ROCHE,

Judge of the United States  
District Court.

[Endorsed]: Filed Jul. 9, 1942. [176]

---

[Title of District Court and Cause.]

STIPULATION RE EXTENSION OF TIME  
FOR FILING AND SETTLEMENT OF  
BILL OF EXCEPTIONS, ETC.

It Is Hereby Stipulated by and between the United States of America, plaintiff and appellee in

the above entitled cause, and the appellants therein, as follows:

First: That the time for the filing by the appellants of their proposed Bill of Exceptions and Assignment of Errors in said cause may be extended by the Court to and including the 30th day of September, 1942.

Second: That the plaintiff and appellee shall have to and including the 20th day of October, 1942 within which to file its proposed Amendments to said proposed Bill of Exceptions.

Third: That the time within which the Bill of Exceptions of the appellants in the above entitled action shall be settled may be extended by the Court to and including the 30th day of [177] October, 1942.

Fourth: That the parties hereto hereby consent to the making and entry, by the above entitled Court, of its Order in accordance with the provisions of this Stipulation.

Dated: September 10th, 1942.

FRANK J. HENNESSEY,

United States Attorney,

By A. J. ZIRPOLI,

Asst. United States Attorney.

MORGAN J. DOYLE,

WALTER M. GLEASON,

WILLIAM B. ACTON,

Attorneys for Appellants.

[Endorsed]: Filed Sep. 10, 1942. [178]

[Title of District Court and Cause.]

ORDER EXTENDING TIME WITHIN WHICH  
TO SETTLE BILL OF EXCEPTIONS AND  
FILE ASSIGNMENT OF ERRORS

Upon reading and filing the stipulation of the parties to the above entitled cause, it also otherwise appearing to the Court that there is good cause therefor,

It Is Hereby Ordered that the time within which the proposed Bill of Exceptions of the appellants in the above entitled cause shall be filed therein, be, and it is hereby extended to and including the 30th day of September, 1942.

It Is Further Ordered that the plaintiff and appellee in said cause shall have to and including the 20th day of October, 1942, within which to file its proposed Amendments, if any, to said Bill of Exceptions.

It Is Further Ordered that the time within which the Bill of Exceptions in said cause, on behalf of the appellants therein, [179] shall be settled is extended to and including the 30th day of October, 1942.

Dated: September 10, 1942.

A. F. ST. SURE,

Judge of the U. S. District  
Court

[Endorsed]: Filed Sep. 10, 1942. [180]

[Title of District Court and Cause.]

STIPULATION EXTENDING TIME FOR FILING AND SETTLEMENT OF BILL OF EXCEPTIONS

It Is Hereby Stipulated by and between the United States of America, plaintiff and appellee in the above-entitled cause, and the appellants therein, as follows:

I.

That the plaintiff and appellee shall have to and including the 30th day of October, 1942, within which to file its proposed amendments to the proposed bill of exceptions heretofore filed by the appellants.

II.

That the time within which the bill of exceptions in the above-entitled action shall be settled may be extended [181] by the Court to and including the 15th day of November, 1942.

III.

That the parties hereto hereby consent to the making and entry by the above-entitled Court of its order in accordance with the provisions of this stipulation.

FRANK J. HENNESSY,  
United States Attorney,  
Attorney for Plaintiff and  
Appellee

WALTER M. GLEASON,  
MORGAN J. DOYLE,  
WILLIAM B. ACTON,

Attorneys for Appellants.

[Endorsed]: Filed Oct. 20, 1942. [182]

[Title of District Court and Cause.]

ORDER EXTENDING TIME WITHIN WHICH  
TO SETTLE BILL OF EXCEPTIONS AND  
FILE ASSIGNMENT OF ERRORS

Upon reading and filing the stipulation of the parties to the above-entitled cause, it also otherwise appearing to the Court that there is good cause therefor,

It Is Hereby Ordered that the plaintiff and appellee in said cause shall have to and including the 30th day of October, 1942, within which to file its proposed Amendments, if any, to the proposed Bill of Exceptions of appellants.

It Is Further Ordered that the time within which the Bill of Exceptions in said cause, on behalf of the appellants therein, shall be settled is extended to and including the 15th day of November, 1942.

It Is Further Ordered that the term of this Court be, and the same is, extended to and including the 15th day of November, 1942, to enable the parties to this action to comply with this order within said time.

Dated: October 20th, 1942.

MICHAEL J. ROCHE,  
United States District Judge.

[Endorsed]: Filed Oct. 20, 1942. [183]

[Title of District Court and Cause.]

### ASSIGNMENT OF ERRORS

Come now the defendants and appellants in the above entitled cause and make and file this their Assignment of Errors herein, upon which they will apply for a reversal of judgment and sentence heretofore made in said cause against them, and which errors, and each of them, are to the great detriment, injury, and prejudice of said defendants and appellants, and in violation of the rights conferred upon them by law; and said appellants say that in the record and proceedings in the above entitled cause, upon the hearing and determination thereof in the Southern Division of the United States District Court for the Northern District of California, there is manifest error, in this, to-wit:

#### I.

The Court erred in denying the motions of appellants for [184] a directed verdict of Not Guilty on Count One made by the defendants at the conclusion of the taking of evidence in this cause, which said ruling was duly excepted to by appellants. Said Court erred in this because the evidence was and is insufficient to sustain a verdict of guilty against said defendants, or either thereof, as to said count, and said verdict was and is against the law.

#### II.

The Court erred in denying the motions of appellants for a directed verdict of Not Guilty on Count Two made by the defendants at the conclu-

sion of the taking of evidence in this case, which said ruling was duly excepted to by appellants. Said Court erred in this because the evidence was and is insufficient to sustain a verdict of guilty against said defendants, or either thereof, as to said count, and said verdict was and is against the law.

### III.

The Court erred in denying the motions of appellants for a directed verdict of Not Guilty on Count Three made by the defendants at the conclusion of the taking of evidence in this case, which said ruling was duly excepted to by appellants. Said Court erred in this because the evidence was and is insufficient to sustain a verdict of guilty against said defendants, or either thereof, as to said count, and said verdict was and is against the law.

### IV.

The Court erred in denying appellants' motion in arrest of judgment because of the various jurisdictional defects and matters appearing of record, all as fully set forth in other portions of this Assignment of Errors, and in said motion, which ruling was duly excepted to by appellants. [185]

### V.

The Court erred in denying appellants' motion for a new trial, which said ruling was duly excepted to by appellants. Said Court erred in this because of all of the aforesaid reasons, and further because of the errors of law at the trial of said cause, as particularly assigned and set forth hereinafter.



## VI.

The Court erred in denying appellants' motion to compel the Government to elect as to which of the two separate alleged offenses set forth in Count Three it desired to submit to the jury; said Count contained two distinct charges and the Court should have compelled the Government to elect between these two. Said ruling was duly excepted to.

## VII.

The Court erred in giving the following instruction to the jury, viz:

“The sole and remaining question for you to determine from the evidence in this case is whether or not the drugs covered by the three counts of the Information were misbranded as alleged by the Government. If you are satisfied from the evidence beyond a reasonable doubt that the articles of drug bore statements in their labeling or accompanying circulars or newspaper mat that were false or misleading in any particular in which they are alleged in the Information to be false or misleading, then the drugs in those counts wherein the labeling is so false or misleading in any particular is misbranded in the manner charged by the Government and your verdict shall be guilty as to those counts wherein such misbranding exists. If you find from the evidence that the statements in the labeling of the drugs covered by the respective counts of the Information support the therapeutic claims of the defendants and are true, then the drugs covered by

those counts wherein the statements on the labeling as to therapeutic claims [186] are true, are not misbranded, your verdict should be not guilty for all or any of those counts wherein you so find.”

Said instruction is erroneous in that it is too broad. It in effect instructs the jury that if any false statement was contained on the label or the circulars or advertising material accompanying these products, that would be sufficient to justify a conviction of the defendants, whereas in truth and in fact the only alleged false statements which were in issue were and are those specifically set forth in the information, and which relate to certain phases of the therapeutic efficacy of said products. Said instruction was duly excepted to.

#### VIII.

The Court erred in giving the following instruction to the jury, viz:

“It is not necessary for the Government to prove that each and all of the statements of each count of the Information contained on the label or in the circulars or newspaper mat are false or misleading. If the Government has established by the degree of evidence which I have explained to you, that any one material statement or representation as to the therapeutic effect of the drug upon the label or circular or newspaper mat covered by any one count is false or misleading, then the article covered by that count is misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act, and you should find the defendants guilty as to such counts

in which you find the article so misbranded. But if the Government has failed to establish to your satisfaction by that degree of proof and beyond a reasonable doubt any one of the charges of misbranding in any one or more of the counts, then you should acquit the defendants as to such counts.”

Said instruction is erroneous in that it is too broad. It in effect instructs the jury that if any false statement was contained on the label or the circulars or advertising material [187] accompanying these products, that would be sufficient to justify a conviction of the defendants, whereas in truth and in fact the only alleged false statements which were in issue were and are those specifically set forth in the information, and which relate to certain phases of the therapeutic efficacy of said products. Said instruction was duly excepted to.

### IX.

The Court erred in giving the following instruction to the jury, viz:

“The Federal Food, Drug and Cosmetic Act does not make the intent with which an unlawful shipment is made, an ingredient in the offense. The intent of the defendants is immaterial.”

Said instruction is erroneous in that it conveyed the impression to the jury that even if the alleged acts or offenses with which defendants were charged in the information were due to inadvertence and through no willful intent or knowledge on the part of the defendants, the defendants would still be

guilty of a crime. Said instruction was duly excepted to.

#### X.

The Court erred in giving the following instruction to the jury, viz:

Therefore, if you find from the evidence beyond a reasonable doubt that the drugs involved in the three counts of the indictment, or any of them, were in fact misbranded in the manner alleged in the information or any count thereof, you shall find the defendants guilty as charged in those counts wherein you find the drugs were misbranded, regardless of the intent in the minds of the defendants.”

Said instruction is erroneous in that it conveyed the impression to the jury that even if the alleged acts or offenses with which defendants were charged in the information were due to inadvertence and through no willful intent or knowledge on the [188] part of the defendants, the defendants would still be guilty of a crime. Said instruction was duly excepted to.

#### XI.

The Court erred in giving the following instruction to the jury, viz:

“If, after hearing the evidence in this case, you reach the conclusion that the drugs or products involved here were harmless, that does not excuse the defendants, if you find that they placed statements upon said drugs which were false, concerning the curative and therapeutic effects of such products, as the danger and injury to the public from repre-

sentations of this type is in that it induces persons frequently to rely in serious cases upon preparations without healing virtue when, but for this reliance, they would secure proper advice and treatment for the ills which affect them.”

Said instruction is erroneous in that it in effect instructs the jury that if any false statement was contained on the label or the circulars or advertising material accompanying these products, that would be sufficient to justify a conviction of the defendants, whereas in truth and in fact the only alleged false statements which were in issue were and are those specifically set forth in the information, and which relate to certain phases of the therapeutic efficacy of said products. Said instruction was duly excepted to.

## XII.

The Court erred in refusing to give the following instruction submitted and requested by defendants, viz:

“To constitute a party guilty of crime, the evidence must show intentional participation in the attempt to violate the statutes in question.”

Defendants duly excepted to said ruling. Said instruction was and is proper, and particularly related to the alleged [189] misbranding charged in Count Three. The evidence shows that the omission of certain matter from the labels on the hemorrhoid ointment was inadvertent and without the knowledge of the defendants.

## XIII.

The Court erred in refusing to give the following instruction submitted and requested by defendants, viz:

“There must be an intentional participation in the transaction with a view to the common design and purpose, before a party can be guilty of crime.”

Defendants duly excepted to said ruling. Said instruction was and is proper, and particularly related to the alleged misbranding charged in Count Three. The evidence shows that the omission of certain matter from the labels on the hemorrhoid ointment was inadvertent and without the knowledge of the defendants.

## XIV.

The Court erred in refusing to give the following instruction proposed and requested by defendant Colgrove, viz:

“In this case Mr. Colgrove is jointly charged with the defendant corporation in the information. However, you are instructed that it is the law that an officer of a corporation—and here Mr. Colgrove is President of the corporation—cannot be held liable unless he personally knowingly and actually participates in the commission of the acts alleged to be unlawful. An officer of a corporation is not criminally liable for the acts of the corporation performed by other officers or agents. Therefore, unless you find that Mr. Colgrove did know that the jars of ointment referred to in the Third Count of

the information had not been properly labeled, but that the jars of ointment with the incomplete label had been shipped by clerks and employees of the corporation without Mr. Colgrove's knowledge, then and in that [190] event you will find Mr. Colgrove personally not guilty."

Said ruling was duly excepted to.

Said defendant was simply a corporate officer and cannot be held responsible for corporate acts, except those in which he had a personal participation, and the jury should have been so instructed, particularly with respect to the charge in the Third Count which involved the omission from certain labels of certain quantitative data.

## XV.

The Court erred in sustaining an objection of the Government to questions of defense counsel to the witness Dr. Von Hoover, which questions were designed to elicit the opinion of the witness as to the efficacy of Colusa Natural Oil in the treatment of certain skin diseases. This witness was, as shown in the record, a duly qualified pharmacologist whose business was that of testing preparations and drugs for their therapeutic efficacy; the evidence shows that he was thoroughly trained in his profession, holding degrees from leading universities, including the University of Vienna; that he had practiced this profession for a long period of time, and in this practice had represented, and now represents, leading drug firms of this country as a consultant

pharmacologist; that he and some professional associates operate a testing clinic at San Antonio, Texas, and that the function and business of this clinic is that of testing just such preparations as those involved in this case to determine their therapeutic value; that this witness and his said associates had conducted extensive clinical tests of Colusa Natural Oil; that in those tests, they actually tested the oil on many human beings suffering from the various ailments mentioned in the information in this case, including the disease of psoriasis, to determine whether or not this product is efficacious in the treatment of such ailments. After bringing out all of said facts aforementioned, the defendants [191] sought to elicit the opinion of this witness as to the efficacy of this product. The Government objected to such testimony on the ground that because the witness was not actually an M.D., he was not competent to give any such opinion. The Court agreed with counsel for the Government and sustained their objections to this line of examination. The record with respect to this in part is as follows:

“Mr. Gleason: Q. What is your opinion, Doctor, based upon the many tests made by you in your laboratory and in these clinics, and based upon your training as a pharmacologist, and based on your studies of the science of pharmacology, what is your opinion as to the efficacy of Colusa Oil in the treatment of psoriasis?”

“Mr. Zirpoli: I want to interpose an objection, your Honor.



“The Court: Objection sustained. Proceed.

“Mr. Gleason: Note an exception, if your Honor please.

“The Court: Let an *objection* be noted.”

Said ruling was erroneous in that said evidence was and is clearly competent and material. This witness, a duly qualified specialist in this field of testing drugs had actually made detailed clinical tests to determine the efficacy of this product in the treatment of psoriasis, and the mere fact that he was not an M.D. certainly did not preclude him from testifying on this subject.

## XVI.

The erroneous and prejudicial effect of the Court's rulings on this phase is further exemplified by the following portions of the record:

“Yes, I observed the use of Colusa Natural Oil on a man named Mercurlin, who met a premature death. He was a deputy sheriff.

“Q. What skin disease did he have Doctor? [192]

“Mr. Zirpoli: I object to that on the ground that this witness is not qualified to testify to that.

“The Court: Objection sustained.

“Mr. Gleason: Q. Do you know what disease he had?

“Mr. Zirpoli: The same objection.

“The Court: The same ruling.

“Mr. Gleason: Q. He had a skin disease, did he, doctor? A. He did.

“Q. On what part of his body?

“A. On the right arm.

“Mr. Zirpoli: I ask that the answer go out. He is not competent to testify.

“Mr. Doyle: We will take a ruling of the Court.

“The Court: Proceed.”

“Q. After the oil was applied in the clinic, did you observe its effect upon the patient?

“A. Yes.

“Mr. Zirpoli: I object to his observation of the effect of a medication on a patient. He is not competent to testify to the effect of a medication on a patient.

“Mr. Acton: I don't like to argue after your Honor has ruled, but the law is, I think, your Honor, that a man may observe a person, and may know that person is undergoing a certain type of medication, because he is undergoing it right in his own home, or in his laboratory.

“Mr. Gleason: Q. Did you see the Colusa Natural Oil applied to people who had psoriasis in this clinic? A. Yes.

“Mr. Zirpoli: Just a moment, I object to that. He is not competent to testify they had psoriasis.

“The Court: Objection sustained.

“Mr. Zirpoli: There are methods of proving those things by bringing proper witnesses.”

## XVII

The Court erred in sustaining an objection of the Government [193] and striking certain testimony

of the witness Dr. Von Hoover with respect to a varicose ulcer case. This case had been treated with Colusa Natural Oil in this clinical testing of Dr. Von Hoover and his associates. This testimony was as follows:

“A. Mrs. A. Nelly is the varicose ulcer.

“The Court: How do you know?

“A. Well, from my experience, your Honor, in the laboratory, and as a doctor of science, and from the knowledge I have of *Materia Medica*, and dermatology and therapeutics, I determine that.

“The Court: By observation.

“A. By observation, yes sir.

“The Court: That is what you base your testimony on?

“A. That is what I base my testimony on, yes sir.

“The Court: All right, proceed.

“Mr. Gleason: May I have this picture marked next in order for identification?”

Thereupon the photograph was marked Defendants' Exhibit H for identification.

“Mr. Zirpoli: May I ask one other fundamental question?

“The Court: You may.

“Mr. Zirpoli: You are not a pathologist, are you?

“A. No sir, I am not a pathologist.

“Mr. Zirpoli: Now I object to his conclusion as to the woman having a varicose ulcer on that further ground.

“The Court: I will sustain the objection and instruct the jury to disregard the testimony.

“Mr. Gleason: May we have an exception?”

“The Court: You may have an exception.”

For the same reasons as are set forth herein-above in Paragraph XV with respect to other testimony of this same witness, said ruling of the Court was erroneous, and obviously prejudicial [194] to the defendants.

### XVIII

The Court erred in sustaining an objection of the Government to certain testimony of the witness Dr. Von Hoover, with respect to the clinical tests made by him and his associates on animals to determine the efficacy of this Colusa Natural Oil, viz:

“Q. Please state briefly the facts observed by you in these clinical tests on this animal therapy as to the results of the use of Colusa Natural Oil on skin diseases of animals. And, Doctor, confine yourself to the facts that you know of your own knowledge and do not read any of the opinions if they are opinions of Dr. Burby.

“Mr. Zirpoli: I want to make this objection, your Honor. He is asked to testify as to the effect of the application of this oil, which calls for his opinion and conclusion as a veterinarian.

“The Court: Objection sustained.

“Mr. Acton: Will your Honor allow us an exception to that ruling?”

“The Court: Note an exception.

“Mr. Gleason: Q. Doctor, in the practice of your profession as a pharmacologist and your work for these firms that you mentioned yesterday, including the Goodman Laboratories and the rest of them, as their consultant, do you in the practice of your profession resort to animal therapy to test the efficacy of drugs and preparations?”

“A. Yes.

“Q. Is that a part of the ordinary practice of the ordinary pharmacologist?”

“A. That is the practice.

“Q. I will ask you to state, Doctor, the facts that you observed, in your clinical examinations, that is to say, this animal therapy, from the use of Colusa Natural Oil upon the skin diseases of dogs and cats used in this animal therapy.

“Mr. Zirpoli: May it please the Court, I submit that the [195] question is identical in different terms and the objection is made exactly as it was made to the last question.

“The Court: The objection will be sustained.

“Mr. Acton: May we have an exception to the ruling?”

“The Court: Note an exception.

“Mr. Zirpoli: May I have the record also show that my objection is on the ground that it is irrelevant and immaterial to the case.

“The Court: Let the record so show.”

The evidence sought to be elicited by these questions was clearly relevant and material and the Government's objection that this witness was not

qualified to testify as to these facts because he was not a licensed veterinarian was without merit. This witness was a qualified pharmacologist and fully qualified to testify as to this animal therapy which, as the record shows, is an orthodox procedure in the testing of drugs and other such preparations for the treatment of disease.

### XIX

The Court erred in sustaining an objection of the Government to certain questions propounded to the witness Dr. Von Hoover by the defense in their effort to bring out all the facts concerning the clinical testing at San Antonio by this witness and his associates of this Colusa Natural Oil. The witness had in his possession an original memorandum prepared by him and containing the facts observed by him in these tests, and he testified that this memorandum was made immediately upon the conclusion of these tests, and that the memorandum refreshed his recollection as to the facts observed by him in the use of this oil upon various persons having the diseases mentioned in the information in this case. The witness further testified:

“Q. What is it?

“A. It is a report of the clinical results of oil on the [196] physiological tests on human patients.

“Q. Those are the one hundred and some-odd patients you mentioned yesterday afternoon?

“A. This contains a hundred, this report.

“This report contains the essential facts which I observed in the making of these tests with Colusa Natural Oil on those one hundred patients.

“Q. Does this report, Doctor, contain a statement of the facts observed by you in these clinical tests made by you and your associates in your presence, on human beings, to ascertain the therapeutic value of Colusa Natural Oil in the treatment of psoriasis, athlete’s foot, impetigo, varicose ulcers and hemorrhoids?           A. Yes.

“Q. And also acne? I omitted acne.

“A. No, I don’t believe we tested it on acne.

“Q. You are right, Doctor. You did test for poison oak and ivy.           A. Yes.

“Q. Now then, will you, by reference to this report—

“Mr. Zirpoli: May I ask some foundational questions before I interpose any objections? This report also purports to be the reports of Dr. A. Berchelmann, M. D., clinician, is that correct?

“A. Yes.

“Q. And this report also purports to show the effects and results secured by the treatment of these human persons by the physician and surgeon, is that correct?           A. Yes.

“Mr. Zirpoli: Then, your Honor, I submit that the witness is incompetent to testify as to the facts herein contained on the grounds that it is not exclusively the information of the witness, and on the further ground that it contains hearsay testimony predicated upon hearsay facts of a physi-

cian and surgeon, a person other than himself, and on the further ground that he is not competent as a physician and surgeon to testify as to the effect [197] and results.

“The Court: Same ruling. The objection will be sustained.

“Mr. Acton: May we be allowed an exception to the ruling?”

“The Court: Note an exception.”

Said ruling was erroneous and highly prejudicial to the defense. It was most important to the defendants that they be permitted to develop all the facts concerning this clinical testing done by Dr. Von Hoover and his associates. The witness made this memorandum when the facts were clear in his mind, and under settled law he had a right to refer to this original memorandum for the purpose of refreshing his recollection as to the exact facts concerning these very important tests.

## XX

The Court erred in sustaining an objection of the Government to a certain question propounded to the witness Dr. Von Hoover by the defense, viz:

“Mr. Gleason: Q. And in the cases personally observed by you in these clinical tests, in any of these cases did you observe any unfavorable or injurious results from the use of Colusa Natural Oil on these patients?”

“Mr. Zirpoli: Objected to as calling for an opinion and conclusion, your Honor, of this witness, who is not a physician and surgeon.



“Mr. Gleason: That is his business, if your Honor please, and profession; he tests drugs.

“The Court: The objection will be sustained.

“Mr. Acton: May we note an exception to that ruling?

“The Court: Note an exception.”

The fact as to whether or not any injurious or unfavorable results ensued from the use of this Colusa Oil in this clinical testing at San Antonio was, we respectfully submit, a clearly relevant and material fact bearing upon the worth and efficacy of [198] this product.

## XXI

The Court erred in sustaining an objection of the Government to certain testimony of the defendant Colgrove. One of the charges in the Third Count in the information is that the defendants omitted to place on certain labels the designation of the quantity of the contents of the jars in question. The defense sought to show that this omission was entirely inadvertent and was caused by a mistake of the printing firm which printed these labels. The Court ruled that such testimony was irrelevant and immaterial, viz:

“Mr. Gleason: Did you eventually discover that such labels were being sent out?

“A. I did, and destroyed the rest of them; I destroyed the balance of those labels and ordered correct labels, a new printing of labels.

“Mr. Zirpoli: May I ask that that all be stricken out as irrelevant and immaterial?

“The Court: The objection will be sustained.

“Mr. Acton: May we note an exception?”

“The Court: Note an exception.

“Mr. Gleason: Q. When you ordered the labels printed at the McCoy Label Company, did you in your order ask them to put on the label, the designation ‘ $\frac{3}{4}$  of an ounce’? A. I did.

“Mr. Zirpoli: Same objection, your Honor; irrelevant and immaterial as to what he did.

“The Court: Objection sustained.”

It was here stipulated that if Miss Nelson, representative of the firm which printed the labels, were called, she would testify this was a mistake on the part of her printing firm; and that in the printing of the labels involved in the Third Count in this case, the designation “ $\frac{3}{4}$  of an ounce” was inadvertently [199] omitted from the labels, and that Mr. Colgrove as manager of the defendant company had previously sent said printing firm a letter, marked here as Defendants’ Exhibit P for identification, which was received by the McCoy Label Company; and that within a week of this time, Mr. Colgrove had the label company correct this inadvertence and put upon the label the designation “ $\frac{3}{4}$  of an ounce.” Will that be so stipulated?

“Mr. Zirpoli: Subject to the objections heretofore made that it is irrelevant and immaterial.

“The Court: Objection sustained.

“Mr. Gleason: An exception, if the Court please.

“The Court: Very well.”

Mr. Gleason, at this time, to complete that record, offered in evidence Defendants' Exhibit P for identification, which is the letter Mr. Colgrove previously referred to.

“Mr. Zirpoli: We make the same objection. It was offered once before, and I object again that it is irrelevant and immaterial.

“The Court: Objection sustained.

“Mr. Doyle: May we have an exception?

“The Court: Exception.”

Said testimony was relevant and material because it showed that the alleged omission from the label was entirely inadvertent and without the knowledge of the defendants.

## XXII

The Court erred in sustaining an objection of the Government to certain proposed testimony of the defendant Colgrove. The information charges that certain statements made in the advertising matter issued in connection with this Colusa Natural Oil were false. Among these statements quoted in the information is the statement substantially to the effect that various users of this product have credited it with effective results, etc. In an [200] effort to explain the basis of this particular statement, and to demonstrate the truth thereof, the defense sought to show that the defendants based it in part upon hundreds of voluntary testimonials received from persons who had used this oil in the

treatment of the diseases mentioned in the information, viz:

“Mr. Gleason: Q. In the information, Mr. Colgrove, there is a statement set forth, ‘Colusa Natural Oil is credited by other users with producing relatively as remarkable results as above pictured in relieving irritation of external acne, eezema, psoriasis, athlete’s foot or ringworm, poison ivy, varicose ulcers, burns and cuts.’ You have been marketing this oil for approximately two or three years, as I recall your testimony. Upon what did you base this statement that is contained in this information, the statement just read?

“Mr. Zirpoli: I object, your Honor; it is irrelevant and immaterial as to what he based it on; all that matters is the fact that the statement is there and the statement speaks for itself.

“Mr. Gleason: In this information are various statements quoted from the advertising matter. Counsel has submitted to your Honor instructions that we desire to argue to the effect that if any false statement is contained in any portion of the advertising matter, the mats or otherwise, that this man can be convicted. We desire to show the truth of this statement. We desire to show that when Mr. Colgrove said that ‘Colusa Natural Oil is credited by other users’ he was telling the truth, and we desire to submit to your honor hundreds of testimonials in regard to this product received from users by the defense.

“The Court: Testimonials cannot go into evidence here.

“Mr. Gleason: I don’t want you to think I am going contrary to your ruling. I make the statement, I make it as an officer of this court, that I believe under this information, [201] under settled principles of law——

“The Court: You may believe whatever you see fit.

“Mr. Gleason: May I present the law to your Honor on that subject?

“The Court: No, we will proceed. You make your offer of proof and you have a record to protect you, and I will rule.”

“Mr. Gleason: Then we will make the offer of proof and that will conclude this subject. We offer to prove the following facts by this witness at this time:

“First, that from persons to whom this preparation was distributed by these defendants throughout the United States, hundreds of testimonials, the originals of which are here available for inspection, and we have gone to the trouble of copying them—hundreds of testimonials, voluntary testimonials, have been received by this company and by this defendant.

“We further offer to prove that this product was marketed and distributed to these thousands of persons under a money-back guarantee if not satisfied, and that out of the thousands of people to whom that guarantee was made, approximately two per cent availed themselves of the guarantee.

“We further offer to prove, if the Court please, the truth of the statement contained in this information. We offer these testimonials, and these testimonials will prove the truth of the statement that ‘Colusa Natural Oil is credited by other users with producing relatively as remarkable results as above pictured in relieving irritation of external acne, eczema, psoriasis, athlete’s foot or ringworm, poison ivy, varicose ulcers, burns and cuts,’—the statement contained at lines 13 to 16 on page 3 of this information and reincorporated by reference in later portions of the information. And we offer those facts, if the Court please, as being relevant, pertinent and competent in the proof of the issues involved in this case. [202]

“Mr. Zirpoli: If I might respectfully submit, your Honor, as I have heretofore had occasion to state in arguing various points before the Court, that there was no element of fraud or bad faith involved; it is a simple case of misbranding, and that therefore testimonials are not admissible in evidence. Had this been a fraud case, then the position taken by counsel would have been a proper one, but this is a misbranding case and not a case predicated upon fraud or fraudulent intent.

“The Court: The objection will be sustained.

“Mr. Doyle: Exception if your Honor please.

“The Court: Certainly.

“Mr. Gleason: At this time, if the Court please, simply to complete the record, we desire to have

the original testimonials marked for identification.

“Q. To get a preliminary foundation, you have handed me, Mr. Colgrove, a file containing various papers. Did you prepare that file?

“A. No, sir; those letters were written by individuals.

“Q. I mean, did you put these into the file?

“A. Yes, sir.

“Q. What are they?

“A. Voluntary testimonial letters received from purchasers of Colusa Natural Oil products.

“Q. And you personally know that these are voluntary testimonials sent into the office?

“A. Yes, sir.”

Thereupon, Mr. Gleason offered these original testimonials in evidence.

“Mr. Zirpoli: Same objection; irrelevant and immaterial.

“The Court: Same ruling.

“Mr. Gleason: May they be marked, then, for identification?

“The Court: Let them be marked for identification.” [203]

The proffered testimonials were then marked Defendants' Exhibit Q-1 for identification.

“Mr. Doyle: May we have an exception to the last ruling, your Honor?

“Mr. Gleason: Q. You heard me read, Mr. Colgrove, a statement from the information in this case with respect to other users crediting various

and sundry things, a statement contained in some of the advertising matter. Upon what did you base that statement?

“Mr. Zirpoli: Same objection; irrelevant, incompetent and immaterial.

“The Court: Objection sustained.

“Mr. Doyle: I desire an exception, if the Court please.”

Said ruling was erroneous because the aforementioned testimonials were admissible and competent and relevant, if for no other purpose than that of explaining the basis for said assertion in the advertising matter, which assertion the Government alleged to be false. The testimonials were also admissible and competent on the issue as to the good faith of the defendants.

### XXIII.

The Court erred in sustaining an objection of the Government to certain proposed testimony of the defense, viz:

“Mr. Gleason: Q. Mr. Colgrove, in the course of your marketing of this product, can you tell us the number of sales that have been made of this product to people throughout the United States?

“A. Many thousands of them.

“Q. You sold your product on a money-back guarantee, did you not? A. Yes.

“Q. Can you tell us how many of the people to whom you sold this product throughout the United States availed themselves of the opportunity to receive their money back? [204]



“Mr. Zirpoli: I object to that as irrelevant and immaterial, and a form of negative proof. I object to it.

“The Court: The objection will be sustained. We are not here concerned with any money-back guarantee. There is no issue involved in this case about money or money back for any sales. Let us proceed.

“Mr. Acton: Will your Honor allow us an exception to the last ruling?

“The Court: Certainly.”

The facts which the defense sought to elicit by said question aforementioned were competent, relevant and material because the issues in this case involve several things. In the first place, the good faith of the defendants was in issue, this being a criminal case; in the second place, the efficacy of this product was in issue. The facts sought to be elicited by the aforementioned question would have borne directly upon and would have been relevant to both of these issues.

#### XXIV.

The Court erred in sustaining an objection of the Government to a question asked of the witness Colgrove with respect to the source of certain statements inserted in the advertising matter with respect to the efficacy of radium and radium emanations. The Government claimed that these statements were false, and the defense sought to show that the statements were in fact based upon works and treatises of eminent specialists in the field of radium, viz:

“Mr. Gleason: Do you have available, Mr. Colgrove, the statement upon the basis of which these statements were incorporated in the newspaper mat with respect to the efficacy of radium through the body? Can you give counsel the authorities from which that was procured? A. Yes, sir.

“Mr. Zirpoli: I object to that. Authorities as given by [205] this witness are irrelevant and immaterial.

“Mr. Doyle: May he answer the question, if your Honor please?

“The Court: What question?

“Mr. Doyle: The question as to the source from which he obtained this statement which appears quoted in the mat. It appears as quoted.

“The Court: It matters very little the source of the information or where it came from. We are not concerned with the source of it.

“Mr. Doyle: Exception, if your Honor please.”

Defendants had a right to explain the source of any and all statements in the advertising matter which the Government claimed to be false, and the ruling of the Court in this instance was particularly prejudicial because the advertising matter specifically stated that eminent scientists had made the assertions in question about the power of radium. Under these circumstances it was no more than fair and just that the defendants be permitted to give the source and basis of this statement which the Government attacked as false.

XXV.

The Court erred in permitting the Government to pursue a long line of cross examination of the defendant Colgrove with respect to his various other business activities, none of which said facts had any relevancy or materiality in the case at bar. The Court permitted this examination over repeated objection of the defense and exceptions were duly taken to such ruling. The following illustrates this line of examination, viz:

“Q. In 1930, did you continue the operation of the insurance business in the State of Illinois?”

“Mr. Gleason: We object to that on the ground that it is incompetent, irrelevant and immaterial, and has nothing to do with [206] the issues in this case.

“The Court: Objection overruled.

“Mr. Gleason: May we have an exception?”

“The Court: Note an exception.

“A. Yes, sir.”

It was here stipulated that defendants' objections would run to this line of questioning with exceptions reserved.

Said ruling of the Court was erroneous and said line of examination was not proper cross examination.

XXVI.

The Court erred in permitting the Government to cross examine the defendant Colgrove at length with respect to a certain letter of a Dr. Woodman. Said examination was wholly incompetent, irrele-

vant and immaterial and was not proper cross examination, viz:

“Mr. Gleason: Just a moment, Mr. Colgrove. We object to this on the ground that it is incompetent, irrelevant and immaterial, if the Court please, not proper cross examination, has no bearing upon the issues in this case.

“Mr. Zirpoli: I would like to submit I am entitled to test the credibility of the witness, your Honor.

“Mr. Gleason: It has nothing to do with the credibility of the witness.

“Mr. Zirpoli: Yes it has.

“The Court: When was this?

“Mr. Zirpoli: The witness took the stand.

“The Court: In 1939?

“Mr. Gleason: This is a letter, if the Court please, dated October 28, 1940. So the Court will know——

“The Court: I will allow it. Objection overruled.”

“The letter you show me is a copy of a letter written me by Dr. Woodman, but the original letter did not have ‘M. D.’ after [207] his signature; my stenographer must have added the ‘M.D.’ by mistake. When I submitted the letter it evidently had ‘M.D.’ on it; I know Dr. Woodman for six months and saw him the day of the hearing; the photostat you show me is a copy of the letter Dr. Woodman gave me and ‘M.D.’ does not appear on it.

“Mr. Gleason: We object to that on the ground that it is utterly incompetent, irrelevant and immaterial. What bearing has that on this case?”

“The Court: That is a matter entirely for the jury. Let the jury determine.

“Mr. Gleason: He testified that his secretary made a mistake.

“Mr. Zirpoli: I will ask that these two exhibits be marked next in order in evidence as one exhibit.

“Mr. Gleason: May we have an exception?”

The documents were admitted and marked Government’s Exhibit No. 13.

“Mr. Gleason: May we have an exception, if the Court please?”

“The Court: Note an exception.”

## XXVII.

The Court erred in sustaining an objection of the Government to a question propounded by defense counsel to the defendant Colgrove. The defense sought to bring out, in order to show the good faith of the defendants in the marketing of the products involved in this case, that their practice was to give this oil free of charge to persons needing it, if such persons could not pay for it, viz:

“Mr. Gleason: Has it been your practice, Mr. Colgrove, in the distribution of this oil, to give it free of charge to hospitals, doctors, and whoever wanted it for use if they could not pay for it? [208]

“Mr. Zirpoli: I object to this, your Honor, as a pure and simple sympathetic appeal.

“Mr. Gleason: It certainly shows good faith, if the Court please.

“Mr. Zirpoli: I submit that good faith is not in issue.

“The Court: The objection will be sustained. Let it go out and let the jury disregard it.

“Mr. Acton: May we also have an exception, your Honor?

“The Court: Note an exception.”

The facts sought to be elicited by this question directly bore upon the good faith of these defendants whom the Government had charged with criminal practices.

#### XXVIII.

The Court erred in overruling an objection of the defense to a question propounded to Dr. Tainter, a witness for the Government, viz:

“Mr. Zirpoli: Q. Doctor, from your examination of this product, was it any different, from your own experience, from ordinary crude petroleum oil?

“Mr. Gleason: Just a moment. If the Court please, we object to that on the ground that it is incompetent, irrelevant and immaterial; that no proper foundation has been laid. And we stress this objection, if the Court please, for the reason, as has already been brought out, there are thousands of different types of crude oils with thousands of different constituents, and for a blanket assertion to be made of this type is utterly unfair. If the Court please, we submit this: if the doctor

wants to testify as to the crude oils that he has had experience with, he should give us the formulas and the designations, paraffine, asphalt or otherwise, and then compare this oil with them. Then we have some facts.

“The Court: The Court is prepared to rule. If the witness knows he may answer. The objection may be overruled. [209]

“Mr. Acton: Will your Honor allow us an exception before the answer?

“The Court: Note an exception.

“A. Well, because there are many varieties of oils, the material was different, of course, from a considerable number of them. However, it had no distinctive properties in the sense that it smelled like ichthyol or materials which you would recognize as having medicinal power, so that as far as I could make out, it was the commonest kind of crude oil in the sense that it had no special properties that were distinctive or characteristic.”

Said ruling of the Court was erroneous because, as the record shows, there are a great many varieties of crude oils having many different characteristics. The Government sought in this case to impress the minds of the jury their claim that this was an ordinary crude oil. The question above quoted was designed to carry out this purpose and was prejudicial to the defendants for the reasons stated in the argument above quoted in connection with this question. Said question was wholly incompetent, irrelevant and immaterial.

## XXIX.

The Court erred in overruling an objection of the defense to a question propounded to the witness Dr. Tainter by the Government concerning the medicinal value of a wristwatch, viz:

“Mr. Zirpoli: Q. Is there any medicinal value in wearing a wristwatch with a luminous dial, in your opinion as a medical man and pharmacologist, as a man who applies medicines and oils to the skin and to the person?”

“Mr. Gleason: We object to that, if the Court please, on the ground that it is incompetent, irrelevant and immaterial, no proper foundation laid.

“The Court: I have allowed wide latitude on this testimony. He may answer. Objection overruled. [210]

“Mr. Doyle: Exception.

“A. No. Wearing a wristwatch which has a luminous dial does not give rise to enough radium emanations to have any therapeutic value.”

Said question was incompetent, irrelevant and immaterial, and not within the issues in this case.

## XXX

The Court erred in overruling an objection of the defense to a question propounded to the witness Dr. Tainter by the Government, viz:

“The salve or ointment would not be a competent or good treatment for hemorrhoids. It might be palliative in relieving itching; it might help the itching temporarily, but would not cure the condition. The benzocaine would relieve the itching.



“Mr. Zirpoli: Q. In this product we have .91 per cent of benzocaine, less than one per cent. Is there enough benzocaine there to be efficacious in the treatment of hemorrhoids, in your opinion?”

“Mr. Doyle: If your Honor, please, we object to the question upon the ground that it has been asked and answered. The previous answers given by this witness were upon the basis of this formula given to him by counsel. He has testified that he thought it would be beneficial and this is obviously an attempt, conscious or unconscious, to impeach his own witness.

“The Court: Objection overruled. He may answer.

“Mr. Acton: May we note an exception before the witness answers?”

“The Court: Note an exception.”

The question was obviously an attempt to have the witness change his testimony with respect to the efficacy of this hemorrhoid ointment in relieving the itching incident to hemorrhoids. As stated in the objection, it was in effect an attempt by the [211] Government to impeach this witness.

### XXXI

The Court erred in overruling an objection of the defense to a question propounded to the witness Dr. Tainter by the Government, viz:

“Mr. Zirpoli: What is the effect of the application of oil such as the oil here on the skin?”

“Mr. Gleason: We object, if the Court please,

that no foundation has been laid. We would like to have the doctor state whether or not he ever applied the oil to such a condition. Have you ever applied that oil to a condition of poison oak?

“Mr. Zirpoli: I can cite innumerable cases under the Federal Food and Drug Act, your Honor, which provide that when a man who is a scientist particularly learned in a particular field takes the stand, he is competent to testify about those matters for which he is specifically trained by reason of his learning and his instruction and his scientific training; and furthermore, there are innumerable cases that say that the particular doctor need not even have applied the particular product involved or have used or seen it if he knows its constituent, component parts and has been given the necessary foundation therefor. And that has been done, because we have told the doctor what this stuff consists of, and the doctor himself has seen it, and from his scientific medical knowledge he can give his opinion as to what the effect would be.

“Mr. Gleason: If the Court please, we doubt very seriously whether counsel can produce any case covering testimony of this type. We would like to ask one question, if we may, for foundational purposes, and that question will be whether or not the doctor has ever applied oil of this type to that kind of a disease.

“The Court: The Court is prepared to rule.

“Mr. Zirpoli: That is cross examination. [212]

“The Court: The Court is prepared to rule. You

may develop that on cross examination. The objection will be overruled.

“Mr. Acton: Will your Honor allow us an exception?”

“The Court: Yes.”

The Government had not laid any foundation to show that the witness had applied this particular oil to the skin, and in view of the complex nature of the oils, to permit the witness to testify as to the effect of Colusa Natural Oil on the skin without ever having subjected it to proper tests was incompetent, irrelevant and immaterial.

### XXXII

The Court erred in sustaining an objection of the Government to a question propounded by the defense to their witness Howard Everett. The defense sought to elicit testimony of this witness as to the effects observed by him in the use of Colusa Oil by another person. The Court precluded such testimony by its ruling, viz:

“Mr. Gleason: Did you ever have any occasion, Mr. Everett, to observe personally the effect of Colusa Capsules—the use of Colusa Capsules—on any other person?”

“Mr. Zirpoli: I want to interpose an objection, your Honor. While I recognize that it is proper for counsel to bring a witness into the courtroom who himself used it and can testify as to what this effect has been with relation to his personal use, he cannot call a lay witness to testify as to the effect

of the use of a product of this nature on another person, particularly since he is not qualified. He cannot tell us, nor is he qualified to tell us, of the condition that the particular person may have been suffering from; nor is he qualified to tell us of the results or the beneficial effects.

“The Court: Just a moment. Be seated, gentlemen. The [213] Court is prepared to rule. Read the question, Mr. Reporter.”

(Question read.)

“The Court: The objection will be sustained.

“Mr. Acton: Will your Honor allow us an exception to the last ruling?

“The Court: Certainly.”

The following illustrates how unfairly the testimony was restricted in this connection, viz:

“Q. Will you describe the physical condition of the man prior to his use of the oil?

“Mr. Zirpoli: What do you mean by ‘physical condition’? His appearance as the witness actually saw it?

“Mr. Gleason: That is what we are limited to under your objection.

“A. Why, he was ill.

“Mr. Zirpoli: Your Honor, that very statement is a conclusion; that he was ill calls for a conclusion; that is not a physical description. I ask that that be stricken from the record.

“The Court: It may go out.

“The Witness: He was thin, depressed.

“Mr. Zirpoli: I ask that the conclusion that he

was depressed go out; that obviously is not a conclusion that a person can make.

“The Court: It may go out.”

### XXXIII

The Court erred in sustaining an objection of the Government to a question propounded by the defense to their witness Arthur W. Scott. This witness was a welder who had suffered many burns in the course of years following that work. He testified that he used Colusa Natural Oil on certain of these burns and that it gave great and instantaneous relief. He also testified he had used the well known product Unguentine for such burns, and in [214] order to bring out the merit of Colusa Natural Oil, the following question was propounded, viz:

“Mr. Gleason: Q. State, then if you will, briefly, whether the use of Colusa Natural Oil gave you the same or better relief than the Unguentine had previously given you.

“Mr. Zirpoli: I make the same objection. We don't know anything about Unguentine.

“The Court: Is that all from this witness?

“Mr. Doyle: He hasn't answered the question.

“The Court: The objection will be sustained.

“Mr. Doyle: Exception.”

### XXXIV

The Court erred in sustaining an objection of the Government to a question propounded by the defense to their witness Scott with respect to the following matters. This witness had previously worked

for the defendants in the production of this Colusa Oil at the wells in Colusa County. In the advertising matter attacked by the Government as false, is the statement to the effect that the oil was worth \$10,000 a barrel. In order to demonstrate the correctness of this statement, the defense sought to show by this witness that in order to get one gallon of this valuable medicinal oil, it was necessary to pump from these wells many thousands of barrels of water, and that therefore the production process was so costly as to make a barrel of this medicinal oil worth approximately \$10,000 a barrel, viz:

“Mr. Gleason: Q. You operated these wells in Colusa County for the production of what we term ordinary crude oil. How many barrels of water are pumped in the pumping of these wells, or how many gallons of water in order to get one gallon of this medicinal oil?”

“Mr. Zirpoli: We object to that as irrelevant and immaterial as to the process of how this is manufactured. [215]”

“The Court: Objection sustained.”

“Mr. Gleason: The only purpose, if the Court please, is, if I might just state it: there has been put in evidence a mat with the statement on it, ‘Oil worth \$10,000 a barrel’. If counsel is going to direct any attention to that, we want to show, if the Court please, that this barrel of Colusa Oil does cost \$10,000; that it requires the production of thousands upon thousands of barrels of water.”

“The Court: Is that all?”

The evidence sought to be elicited was relevant and material as bearing upon the truth of the aforementioned statement inserted in said advertising matter and attacked by the Government.

XXXV

The Court erred in overruling an objection of the defense to the introduction by the Government of a certain formula from the United States Pharmacopoeia, viz:

“Mr. Zirpoli: At this time, if the Court please, I wish to introduce in evidence the formula from Government’s Exhibit 14 for identification, which is the United States Pharmacopoeia, which was identified by Dr. Von Hoover.

“Mr. Gleason: I want to interpose an objection. We object to the introduction of this book or any portion of it upon the ground that it is utterly incompetent, irrelevant and immaterial.

“The Court: For the purpose of the record, what is the purpose of this offer?

“Mr. Zirpoli: The purpose of this offer is this: when Dr. Von Hoover was on the stand, I asked him about the Pharmacopoeia of the United States and the Homeopathic Pharmacopoeia, and he stated there were both, and that this was the Allopath. I asked him if he could give me the *the* formula for sulphur ointment, and he told me that the general formula contained five per cent [216] sulphur; I want to show what the formula is in that Pharmacopoeia, which was his Bible.

“The Court: For that limited purpose I will allow it.

“Mr. Acton: May we have an exception?”

“The Court: Note an exception.”

Said proffered evidence was wholly incompetent, irrelevant and immaterial, and did not constitute proper cross examination. It should be noted in connection with this phase, that this same witness who was denied the opportunity by the Court to express his opinions as to the efficacy of these products in the treatment of the various diseases mentioned in the information.

Wherefore, the defendants and appellants pray that by reason of the errors aforesaid, the judgment and sentence imposed upon them in this cause be reversed and held for naught.

Dated: Setpember 28, 1942.

Respectfully submitted,

MORGAN J. DOYLE

WILLIAM B. ACTON

WALTER M. GLEASON

Attorneys for Defendants  
and Appellants.

Service and receipt of copy of the foregoing “Assignment of Errors” this 28th day of September, 1942 is hereby acknowledged.

FRANK J. HENNESSY,

U. S. Attorney

By A. J. ZIRPOLI

Attorneys for Plaintiff [217]



[Title of District Court and Cause.]

STIPULATION RE EXHIBITS

It Is Hereby Stipulated between the parties to the above entitled cause that none of the exhibits offered or received in said cause need be incorporated as a part of the record on appeal except the following, and that the originals of the following exhibits may be deemed to be a part of the Bill of Exceptions in this cause and may be separately transmitted and certified by the Clerk of the above entitled Court to the United States Circuit Court of Appeals, Ninth Circuit, and need not be physically incorporated in the Bill of Exceptions, viz:

Plaintiff's Exhibits Nos. 7, 8, 13, 4, 5, 6, and 14.

Defendants' Exhibits Nos. A, B, D, E, F, G, H, I, J, K, L, M, N, O, P, Q-1. [218]

Dated: September 28th, 1942.

FRANK J. HENNESSY,

U. S. Attorney

By A. J. ZIRPOLI

Attorney for Plaintiff

MORGAN J. DOYLE

WILLIAM B. ACTON

WALTER M. GLEASON

Attorneys for Defendants

It Is So Ordered.

MICHAEL J. ROCHE

Judge of the U. S. District Court

[Endorsed]: Filed Nov. 12, 1942. [219]

above named;

4. The judgment and sentence of the Court as to each of said defendants, and the verdict as to each of said defendants;

5. Motions of said defendants for a new trial, and orders denying the same; [220]

6. Motions of said defendants in arrest of judgment, and orders denying the same;

7. Stipulations and orders for extension of time for the filing and settlement of the Bill of Exceptions and filing of Assignment of Errors;

8. Stipulation and order for certification of original exhibits to the United States Circuit Court of Appeals and omission of certain exhibits from the record;

[Title of District Court and Cause.]

#### PRAECIPE

To the Clerk of Said Court:

Please issue a transcript of the record to the Circuit Court of Appeals for the Ninth Circuit, in the above entitled cause, in connection with the appeals of the defendants Empire Oil and Gas Corporation, a corporation, and Chester Walker Colgrove, and include therein the following papers and orders, with all filing and other endorsements thereon, to-wit:

1. Indictment;
2. Statement of Docket Entries;
3. Arraignment and pleas of said defendants

9. Bill of Exceptions with stipulation of the parties, and order of Court settling said Bill;

10. Assignment of Errors;

11. Notices of Appeal by the defendants Empire Oil and Gas Corporation, a corporation, and Chester Walker Colgrove;

12. Order for deposit of fines in escrow pending appeal;

13. This Praecipe.

In preparing the foregoing record, please eliminate the title of the court and cause.

Dated: November 14th, 1942.

WALTER M. GLEASON

MORGAN J. DOYLE

WILLIAM B. ACTON

Attorneys for Defendants

Service and receipt of copy of the within Praecipe this 16th day of November, 1942 is hereby acknowledged.

FRANK J. HENNESSY

United States Attorney

By A. J. ZIRPOLI

Attorneys for Plaintiff

[Endorsed]: Filed Nov. 16, 1942. [221]

District Court of the United States  
Northern District of California

CERTIFICATE OF CLERK TO TRANSCRIPT  
OF RECORD ON APPEAL

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 221 pages, numbered from 1 to 221, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case of United States of America vs. Empire Oil and Gas Corporation, a corporation, and Chester Walker Colgrove, trading as Colusa Products Company, No. 27554-R, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of Seven and 05/100 (\$7.05) Dollars and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 9th day of December, A. D. 1942.

[Seal]

WALTER B. MALING,

Clerk

By E. VAN BUREN

Deputy Clerk [222]

[Endorsed]: No. 10189. United States Circuit Court of Appeals for the Ninth Circuit. Empire Oil and Gas Corporation, a corporation, and Chester Walker Colgrove, trading as Colusa Products Company, Appellants, vs. United States of America, Appellee. Transcript of Record. Upon Appeals from the District Court of the United States for the Northern District of California, Southern Division.

Filed December 14, 1942.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

In the United States Circuit Court of Appeals  
For the Ninth Circuit

No. 10189

EMPIRE OIL AND GAS CORPORATION, a  
corporation, and CHESTER WALKER COL-  
GROVE, trading as Colusa Products Com-  
pany,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

INSTRUCTIONS TO CLERK UNDER  
RULE 19, PARAGRAPH 6

To Paul P. O'Brien, Esq., Clerk of the United  
States Circuit Court of Appeals:

1. Pursuant to Rule 19, Paragraph 6, Appellants  
hereby request you to print the entire Transcript of  
Record as their record on appeal.

2. Appellants hereby refer to their Assignments  
of Error on file herein as the points on which they  
rely on the appeal, and by reference to said As-  
signments of Error hereby incorporate the same as  
though set forth in haec verba at this place.

Dated: December 29th, 1942.

WALTER M. GLEASON

MORGAN J. DOYLE

WILLIAM S. ACTON

Attorneys for Appellants

[Endorsed]: Filed Dec. 29, 1942. Paul P. O'Brien,  
Clerk.